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JOSEPH F. SPANIOLO, JR.
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No. 90-

IN THE
Supreme Court of The United States

OCTOBER TERM, 1990

COUNTY OF LOS ANGELES, *et al.*,

Petitioners,

v.

YOLANDA GARZA, *et al.*,

Respondents.

**APPENDIX TO PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT**

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November 30, 1990



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U.S. COURT OF APPEALS

FOR PUBLICATION

In the United States Court of Appeals
for the Ninth Circuit

YOLANDA GARZA; SALVADOR
LEDEZMA; RAYMOND PALACIOS;
MONICA TOVAR; GUADALUPE DE
LA GARZA,

Plaintiffs-Appellees,

v.

COUNTY OF LOS ANGELES, BOARD
OF SUPERVISORS, LOS ANGELES
COUNTY; DEAN DANA; PETER F.
SCHABARUM; KENNETH F. HAHN,

Defendants-Appellants/

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

and

LAWRENCE K. IRVIN;
SARAH FLORES,

Intervenors-Appellees,

v.

COUNTY OF LOS ANGELES, BOARD
OF SUPERVISORS, LOS ANGELES
COUNTY; DEANE DANA; PETER F.
SCHABARUM; KENNETH F. HAHN,
et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Central District of California
David V. Kenyon, District Judge, Presiding
Argued and submitted October 10, 1990
San Francisco, California

No. 90-55944

D.C. #CV-88-5135-KN

OPINION

Nos. 90-55945/
90-56024

D.C. #CV-88-5435-KN

Filed: _____

Before: SCHROEDER, D. W. NELSON, and KOZINSKI, Circuit Judges. SCHROEDER, Circuit Judge:

INTRODUCTION

Hispanics in Los Angeles County, joined by the United States of America, filed this voting rights action in 1988 seeking a redrawing of the districts for the Los Angeles County Board of Supervisors. They alleged that the existing boundaries, which had been drawn after the 1980 census, were gerrymandered boundaries that diluted Hispanic voting strength. They sought redistricting in order to create a district with a Hispanic majority for the 1990 Board of Supervisors election in which two board members were to be elected.

The Voting Rights Act, 42 U.S.C. § 1973, forbids the imposition or application of any practice that would deny or abridge, on grounds of race or color, the right of any citizen to vote. In 1980, a plurality of the Supreme Court held that this provision prohibited only intentional discrimination, and would not allow minorities to challenge practices that, although not instituted with invidious intent, diluted minority votes in practice. *City of Mobile v. Bolden*, 446 U.S. 55, 100 S. Ct. 1490 (1980). In response to this decision, Congress amended the Voting Rights Act in 1982 to add language indicating that the Act forbids not only intentional discrimination, but also any practice shown to have a disparate impact on minority voting strength. See 42 U.S.C. § 1973(b). Thus, after the 1982 amendment, the Voting Rights Act can be violated by both intentional discrimination in the drawing of district lines and facially neutral apportionment schemes that have the effect of diluting minority votes.

To the extent that a redistricting plan deliberately minimizes minority political power, it may violate both the Voting Rights Act and the Equal Protection Clause of the Fourteenth amendment. See *Bolden*, 446 U.S. at 66-67, 100 S. Ct. at 1499. The

plaintiffs in this cast claimed that because the County had engaged in intentional discrimination in the drawing of district lines in 1981, the resulting boundaries violated both the Voting Rights Act and the Equal Protection Clause. They further claimed that, whether or not the vote dilution was intentional, the effect of the County's districting plan was the reduction of Hispanic electoral power in violation of the newly amended Voting Rights Act.

The district court held a three-month bench trial. At its conclusion the district court found that the County had engaged in intentional discrimination in the 1981 reapportionment, as it had in prior reapportionments, deliberately diluting the strength of the Hispanic vote. It also found that, regardless of intentional discrimination, the County's reapportionment plan violated the Voting Rights Act because it had the effect of diluting Hispanic voting strength. Finally, it found that, based on post-census data, it was possible to grant the remedy that the plaintiffs sought, which was a redistricting in which one of the five districts would have a Hispanic voting majority. It ordered the County to propose such a redistricting.

In its findings, the district court detailed the recent history of the Los Angeles County Board of Supervisors and the voting procedures by which it has been elected. At least since the beginning of this century, the Board has always consisted of five members, elected in even-numbered years to serve four-year terms. These elections are staggered so that two supervisors are elected one year, and three are elected two years later. Supervisors are elected in non-partisan elections, and a candidate must receive a majority of the votes cast in order to win. If no candidate receives such a majority, the two candidates who receive the highest number of votes must engage in a runoff contest.

The district court found persuasive the evidence showing that the Board had engaged in intentional discrimination in redistrictings that it undertook in 1959, 1965 and 1971. The dis-

trict court further found that the 1981 redistricting was calculated at least in part to keep the effects of those prior discriminatory reapportionments in place as well as to prevent Hispanics from attaining the majority in any district in the future. The findings of the district court on the question of intentional discrimination are set forth in the margin.¹ After entering these

¹The relevant findings with regard to the 1959 Redistricting are as follows:

64. Prior to 1959, District 3 included Western Rosemead and did not include any portion of the San Fernando Valley, Beverly Hills, West Hollywood, West Los Angeles, or Eagle Rock.

65. The 1959 redistricting occurred less than six months after the November 1958 general election for the open position of District 3 Supervisor. Ernest Debs, a non-Hispanic, defeated Hispanic candidate Edward Roybal, by a margin of 52.2 percent to 47.8 percent.

66. Debs received 141,011 votes. Roybal received 128,974 votes. There were four recounts before Debs was finally determined to be the winner.

67. In 1959, Debs reported in a Supervisorial hearing that he and District 4 Supervisor Burton Chace agreed to shift Beverly Hills, West Hollywood, and West Los Angeles from District 4 to District 3.

68. The Board's action transferred between 50,000 to 100,000 voters from District 4 into District 3 and had the effect of substantially decreasing the proportion of Hispanic voters in District 3.

69. Dr. Kousser testified it was his opinion that Debs and Chace agreed to the transfer for two reasons. First, Chace was receptive to the agreement because it enabled him to eliminate Los Angeles City Councilwoman Rosaline Wyman as a possible opponent in his upcoming 1960 bid for reelection. Debs welcomed the change because the move west allowed him to make District 3 more easily winnable against Roybal or another candidate who might appear to Hispanic voters in the next election.

The findings with regard to the 1985 Redistricting are as follows:

88. The Boundary Committee rejected a proposal to move Alhambra and San Gabriel, areas adjacent to growing Hispanic population, from District 1 to District 3. Instead, the committee recommended a complicated two-stage change which moved

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findings and conclusions of law, the district court gave the County the opportunity to propose a new plan, as required by *Wise v. Lipscomb*, 437 U.S. 535, 540, 98 S. Ct. 2493, 2497 (1978).

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Alhambra and San Gabriel from Supervisor Bonnelli's District 1 to Supervisor Dorn's District 5, moved a section of the San Fernando Valley from District 5 to Supervisor Debs' District 3, and moved Monterey Park and unincorporated South San Gabriel from District 1 to District 3.

89. Dr. Kousser testified that, in his opinion, the Board avoided transferring Alhambra and San Gabriel directly to District 3 because those areas were adjacent to areas of Hispanic population concentration and were becoming more Hispanic. The more complicated two-stage adjustments permitted the addition of heavily Anglo areas from the San Fernando Valley and offset the much more limited addition of Hispanic population gained by moving Monterey Park and the unincorporated area of South San Gabriel to District 3.

The Court's findings with regard to the 1971 Redistricting are as follows:

109. In 1971, District 3 lost some areas with substantial Hispanic population on its eastern border. Western Rosemead was transferred from District 3 to District 1. A census tract in the City of San Gabriel was also transferred from District 3 to District 5.

110. George Marr, head of the Population Research Section of the Department of Regional Planning testified that he was surprised by the proposal to move a substantial portion of the San Fernando Valley from District 5 to District 3. Marr described the portion of the San Fernando Valley ultimately added to District 3 from District 5 as looking like "one of those Easter Island heads." Marr developed the general feeling that Debs' representative on the Boundary Committee had requested the additional area in the San Fernando Valley because the residents of the area were regarded as "our kind of people."

The court's findings on the Overall Intent of Past Redistrictings are as follows:

112. The Court finds that the Board had redrawn the supervisorial boundaries over the period 1959-1971, at least in part, to avoid enhancing Hispanic voting strength in District 3, the district that

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Under the Los Angeles County Charter, any redistricting must be approved by four of the five members of the Board. In response

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has historically had the highest proportion of Hispanics and to make it less likely that a viable, well financed Hispanic opponent would seek office in that district. This finding is based on both direct and circumstantial evidence, including the finding that, since the defeat of Edward Roybal in 1959, no well-financed Hispanic or Spanish-surname candidate has run for election in District 3.

113. While Hispanic population was added to District 3 during the 1959-1971 redistrictings, the Court finds that the proportion of Spanish-surname persons added to District has been lower than the Hispanic population proportion in the County as a whole. No individual area added was greater than 15.1 percent Spanish-surname.

114. Dating from the adoption of the County's Charter in 1912 through the 1971 redistricting process, no Los Angeles County redistricting plan has created a supervisorial district in which Hispanic persons constituted a majority or a plurality of the total population.

The Court's findings with regard to the 1981 Redistricting are as follows:

125. The individuals involved in the 1981 redistricting had demographic information available of population changes and trends in Los Angeles County from 1950 to 1980. It was readily apparent in 1980 that the Hispanic population was on the rise and growing rapidly and that the white non-Hispanic population was declining.

127. From a political perspective, since Hispanic population growth was most significant in Districts 1 and 3, if the 1971 boundaries were changed in any measurable way to eliminate the existing fragmentation, the incumbancy of either Supervisor Schabarum or Supervisor Edelman would be most affected by a potential Hispanic candidate.

136. An analysis of the 1978 Supervisor election in District 3 was conducted after the Boundary Committee recommended a plan with an Hispanic population majority in District 3. The actual results of the analysis were never produced. Mr. Seymour did not rule out the possibility that he requested such an analysis and Supervisor Edelman testified that he "most probably" discussed the results of the 1978 election analysis with Mr. Seymour.

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to the court's order directing the County to propose a plan, three Board members submitted a proposal. The district court rejected

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137. Peter Bonardi, a programmer with the Urban Research Section of the Data Processing Department in 1981 and a participant in the data analysis requested by Supervisor Edelman, stated that he was directed not to talk about the analysis of voting patterns and that an "atmosphere of 'keep it quiet' " pervaded.

138. Supervisors Hahn and Edelman sought to maintain the existing lines. To this end, the Democratic minority agreed to a transfer of population from District 3 to District 2. Supervisor Edelman acknowledged that he and Supervisor Hahn had worked out a transfer of population from the heavily Hispanic Pico-Union area on the southern border of District 3 to the northern end of District 2.

139. Supervisor Edelman knew that if the 1971 boundary lines were kept intact, the Hispanic community was going to remain essentially the same in terms of its division among the districts.

140. The Board departed from its past redistricting practice in 1981 and approved a contract with The Rose Institute for State and Local Government, a private entity, to perform specialized services and produce redistricting data at a cost of \$30,000.

157. [Boundary Committee Members] Smith and Hoffenblum opposed the CFR [Chicanos [sic] for Fair Representation] plan because the plan proposed increasing the Hispanic proportion in District 1 from 36 to 42 percent. Both Boundary Committee members perceived the CFR effort as intended to jeopardize the status of Supervisor Scharbarum as well as that of the conservative majority.

158. Hoffenblum testified that one of the objectives of the Republican majority was to create an Hispanic seat without altering the ideological makeup of the Board. According to Hoffenblum, it was "self-evident" that if an Hispanic district was created in Supervisor Schabarum's district it would impact on the Republican majority.

159. The proponents of the Smith and Hoffenblum plans sought to gain areas of Republican strength such as La Mirada, Arcadia, Bradbury in Districts 4 and 5, while losing increasing Hispanic areas such as Alhambra or the predominantly black Compton and other liberal areas of Santa Monica and Venice.

162. Supervisor Edelman would not rule out the possibility that ethnic considerations played at least some part in the rejection by

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that proposal with findings to support its conclusion that the proposal was less than a good faith effort to remedy the violations

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the Board majority of the CFR Plan. Moreover, the fact that CFR proposed a plan in which District 1 had a 42 percent Hispanic population was a possible basis for the rejection of the plan by the majority. Supervisor Schabarum would not accept a 45 or 50 percent Hispanic proportion in his district in 1981.

165. On September 24, 1981, prior to the Board's adoption of the challenged plan, Board members met, two at a time in a series of private meetings in the anteroom adjacent to the board room, where they tried to reach agreement on a plan.

175. The plan adopted in 1981 retained the boundary between the First and the Third Supervisorial Districts, the districts that contain the largest proportions of Hispanics. In doing so, the 1981 Plan continued to split the Hispanic Core almost in half.

176. The Board appeared to ignore the three proposed plans which provided for a bare Hispanic population majority.

177. The Court finds that the Board of Supervisors, in adopting the 1981 redistricting plan, acted primarily with the objective of protecting and preserving the incumbencies of the five Supervisors or their political allies.

178. The Court finds that in 1981 the five members of the Board of Supervisors were aware that the plan which they eventually adopted would continue to fragment the Hispanic population and further impair the ability of Hispanics to gain representation on the Board.

179. The continued fragmentation of the Hispanic vote was a reasonably foreseeable consequence of the adoption of the 1981 Plan.

180. The Court finds that during the 1981 redistricting process, the Supervisors knew that the protection of their five Anglo incumbencies was inextricably linked to the continued fragmentation of the Hispanic Core.

181. The Supervisors appear to have acted primarily on the political instinct of self-preservation. The Court finds, however, that the Supervisors also intended what they knew to be the likely result of their actions and a prerequisite to self-preservation—the continued fragmentation of the Hispanic Core and the dilution of Hispanic voting strength.

found in the existing districting. The court considered other proposals. On August 6 it accepted and imposed a plan which creates a district in which the majority of the voting age citizen population is Hispanic. The County then appealed and this court ordered the matter handled on an expedited basis.

There is a second appeal before us. It is from the district court's denial of a motion to intervene in the main case. During the course of the proceedings, there was a primary election under the existing districting plan. The incumbent supervisor, Edmund Edelman, received a majority of the votes in District 3, and thereby won that seat. In the District 1 contest, the incumbent did not seek reelection. No candidate received the required majority of the votes; therefore, the two front runners, Sarah Flores and Gregory O'Brien, were scheduled to compete in a runoff election on November 6, 1990.

During the remedial phase of these proceedings, one of those candidates, Sarah Flores, sought to intervene in this action in order to oppose any redistricting plan which would result in the need for a new primary election in which additional candidates could run for the seat she was seeking in District 1. The district court denied her petition to intervene and she appeals from that denial. We have jurisdiction of her appeal pursuant to 28 U.S.C. § 1291. *See California v. Block*, 690 F.2d 753, 776 (9th Cir. 1982) (denial of motion to intervene is an appealable order).

I. The County Appeal—Liability

Plaintiffs filed this action in order to require the imposition of new district lines for the 1990 election of supervisors. The record shows without serious dispute that at the time of the decennial redistricting in 1981, it was not possible to draw a district map, with roughly equal population in each district, that contained a district with a majority of Hispanic voters. The district court found, however, that the County in 1981, as part of a course of

conduct that began decades earlier, intentionally fragmented the Hispanic population among the various districts in order to dilute the effect of the Hispanic vote in future elections and preserve incumbencies of the Anglo members of the Board of Supervisors. The evidence in the record also shows that at the time that this action was filed it was possible to draw lines for five districts of roughly equal population size, as required by state law, with one single-member district having a majority of Hispanic voters.

The district court found the County liable for vote dilution on two separate theories. It found that the County had adopted and applied a redistricting plan that resulted in dilution of Hispanic voting power in violation of Section 2. It also found that the County, by establishing and maintaining the plan, had intentionally discriminated against Hispanics in violation of Section 2 and the Equal Protection clause of the fourteenth amendment.

In this appeal, the County's threshold argument is that districts drawn in 1981 are lawful, regardless of any intentional or unintentional dilution of minority voting strength, because at the time they were drawn there could be no single-member district with a majority of minority voters. The County asks us to extract from the Supreme Court's leading decision in *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752 (1986), and subsequent cases in this and other circuits, the principle that there can be no successful challenge to a districting system unless the minority challenging that system can show that it could, at the time of districting, constitute a voter majority in a single-member district.

In response to this position, the appellees argue that no majority requirement should be imposed where, as here, there has been intentional dilution of minority voting strength. The County thus also challenges the sufficiency of the district court's findings with regard to intent.

We hold that, to the extent that *Gingles* does require a majority showing, it does so only in a case where there has been no proof

of intentional dilution of minority voting strength. We affirm the district court on the basis of its holding that the County engaged in intentional discrimination at the time the challenged districts were drawn.

A. *The Background and Effect of Gingles*

In 1982, Congress amended Section 2 of the Voting Rights Act, 28 U.S.C. § 1973, to provide minority groups a remedy for vote dilution without requiring a showing that the majority engaged in intentional discrimination. Congress set forth a non-exhaustive list of factors to guide courts in determining whether there had been a Section 2 violation. S. Rep. No. 417, 97th Cong., 2d Sess., pt. 1 at 28-29. Congress indicated that in applying these factors, courts should engage in a "searching practical evaluation of the 'past and present reality' " of the political system in question. *Id.* at 30. Creation of this "results" test for discrimination under Section 2 did not affect the remedies under Section 2 for intentional discrimination. *Id.* at 27.

In *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752 (1986), the Supreme Court discussed the meaning of the new amendment. While noting the factors the Senate had set out as indicators of impermissible vote dilution, it stated that a court must look to the totality of the circumstances in considering a vote dilution claim. It also established three preconditions for liability under the amendment to Section 2 for claims based only on discriminatory effects: (1) geographical compactness of the minority group; (2) minority political cohesion; and (3) majority block voting. 478 U.S. at 50-51, 106 S. Ct. at 2766-67.

The *Gingles* requirements were articulated in a much different context than this case presents. Although the *Gingles* Court was aware of the history of discrimination against blacks, which was the minority there in question, the Court did not consider any claim that the disputed districting plan had been enacted deliber-

ately to dilute the black vote. See 478 U.S. at 80, 106 S. Ct. at 2760-61. The claim at issue was that the multi-member districts that were being used, regardless of the intent with which they were created, had the effect of diluting the black vote. 478 U.S. at 39-41, 106 S. Ct. at 2781-82. Thus, the court instituted the "possibility of majority" requirement in a case in which it was asked to invalidate a political entity's choice of a multi-member district system, and impose a system of single-member districts, and was not asked to find that the multi-member scheme had been set up with a discriminatory purpose in mind.² An emphasis on showing a statistically significant disparate impact is typical of claims based on discriminatory effect as opposed to discriminatory intent.

In contrast, the district court in this case found that the County had adopted its current reapportionment plan at least in part with

²*Gingles* has spawned confusion in the lower courts. The opinion explicitly reserved the question of whether the standards it set forth would apply to a claim in which minority plaintiffs alleged that an electoral practice impaired their ability to influence elections, as opposed to their ability to elect representatives. 478 U.S. at 46 n.12, 106 S. Ct. at 276 n.12. Nevertheless, it has been applied to preclude such "ability to influence" claims, based upon plaintiffs' failure to demonstrate such an ability to elect representatives under the *Gingles* criteria. See, e.g., *McNeil v. Springfield Park*, 851 F.2d 937 (7th Cir. 1988), cert. denied, 109 S. Ct. 1769 (1989). See generally Abrams, "Raising Politics Up": Minority Political Participation and Section 2 of the Voting Rights Act, 63 N.Y.U. L. Rev. 449 (1988). On the other hand, some courts have dealt differently with the criteria articulated in *Gingles* when facing "ability to influence" claims. They have done so in opinions that "range from virtually ignoring the electoral standard or ignoring it entirely, to considering it a prerequisite to the application of the totality of the circumstances test [specified in the statute itself], to treating it as a, if not the, central element of the test." Abrams, 63 N.Y.U. L. Rev. at 465 (citing *United Latin Am. Citizens v. Midland Indep. School Dist.*, 812 F.2d 1494, 1496-98 (5th Cir. 1987); *Buckanga v. Sisseton Indep. School Dist.*, 804 F.2d 469, 471-72 (8th Cir. 1986); *Martin v. Allain*, 658 F. Supp. 1183, 1199-1204 (S.D. Miss. 1987)) (footnotes omitted). "[T]he language from *Gingles* that creates the 'ability to elect' standard may prove to be *Gingles*' more enduring and problematic legacy." Abrams, 63 N.Y.U. L. Rev. at 468.

the intent to fragment the Hispanic population. See Findings [App. A-67] No. 81. The court noted that continued fragmentation of the Hispanic population had been at least one goal of each redistricting since 1959. Thus, the plaintiffs' claim is not, as in *Gingles*, merely one alleging disparate impact of a seemingly neutral electoral scheme. Rather, it is one in which the plaintiffs have made out a claim of intentional dilution of their voting strength.

The County cites a number of cases in support of its argument that *Gingles* requires these plaintiffs to demonstrate that they could have constituted a majority in a single-member district as of 1981. None dealt with evidence of intentional discrimination. See, e.g., *Romero v. City of Pomona*, 883 F.2d 1418, 1422 (9th Cir. 1989); *McNeil v. Springfield Park*, 851 F.2d 937 (7th Cir. 1988), cert. denied, 109 S. Ct. 1769 (1989); *Skorepa v. City of Chula Vista*, 723 F. Supp. 1384 (S.D. Cal. 1989).

To impose the requirement the County urges would prevent any redress for districting which was deliberately designed to prevent minorities from electing representatives in future elections governed by that districting. This appears to us to be a result wholly contrary to Congress' intent in enacting Section 2 of the Voting Rights Act and contrary to the equal protection principles embodied in the fourteenth amendment.

B. The Findings of Intent

We therefore turn to the appellants' challenge to the district court's rulings with respect to the intent of the supervisors in 1981. The County contends that the district court did not make sufficient findings on intentional discrimination. Focusing on language in Finding 177, quoted *supra* in note 1, the County claims that the district court found only that the supervisors in 1981 intended to perpetuate their own incumbencies. This is a mistaken reading of what the district court found. Although the court noted that "the Supervisors appear to have acted primarily on the political instinct of self-preservation," the court also found

that they chose fragmentation of the Hispanic voting population as the avenue by which to achieve this self-preservation. Finding No. 181. The supervisors intended to create the very discriminatory result that occurred. That intent was coupled with the intent to preserve incumbencies, but the discrimination need not be the sole goal in order to be unlawful. See *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 97 S. Ct. 555 (1977). Accordingly, the findings of the district court are adequate to support its conclusion of intentional discrimination, and the detailed factual findings are more than amply supported by evidence in the record.

Even where there has been a showing of intentional discrimination, plaintiffs must show that they have been injured as a result. Although the showing of injury in cases involving discriminatory intent need not be as rigorous as in effects cases, some showing of injury must be made to assure that the district court can impose a meaningful remedy.

That intent must result, according to the Voting Rights Act, in the

political processes leading to nomination or election . . . [not being] equally open to participation by members of a [protected] class . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

42 U.S.C. § 1973(b). This language is echoed in the intentional discrimination case of *White v. Regester*, 412 U.S. 755, 93 S. Ct. 2332 (1973). There, in addition to intent, the Supreme Court required proof that "the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Id.* at 766, 93 S. Ct. at 2339. See also *Whitcomb v. Chavis*, 403 U.S. 124, 149, 91 S. Ct. 1858, 1872 (1971).

Applying that standard to this case of intentional discrimination, we agree with the district court that the supervisors' intentional splitting of the Hispanic core resulted in a situation in which Hispanics had less opportunity than did other county residents to participate in the political process and to elect legislators of their choice. We conclude, therefore, that this intentional discrimination violated both the Voting Rights Act and the Equal Protection Clause.

C. Laches

The County claims that, because four rounds of elections have occurred since the 1981 reapportionment plan was instituted, and because a regular reapportionment is scheduled to occur in 1991, the plaintiffs' claim for redistricting relief is barred on the ground of laches. It argues that substantial hardship will result from a redistricting now, when another regularly scheduled one is set to occur so closely on its heels. Furthermore, the County contends that the plaintiffs had no excuse for their delay in bringing suit. Therefore, it concludes, the suit should have been dismissed.

Although plaintiffs could have filed an action as early as 1981 in order to enhance their ability to influence the result in a district in which they were then still a minority, their failure to do so does not constitute laches. The record here shows that the injury they suffered at that time has been getting progressively worse, because each election has deprived Hispanics of more and more of the power accumulated through increased population. Because of the ongoing nature of the violation, plaintiffs' present claims ought not be barred by laches.

II. The County Appeal—Remedy

A. Redistricting Between Decennial Redistrictings

The County contends that the district court erred in requiring it to redistrict now, at a point between regularly scheduled de-

cennial reapportionments. Citing *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362, *reh'g denied*, 379 U.S. 270, 85 S. Ct. 12 (1964), the County claims that decennial redistricting based upon census data is a "rule," and that the case "was intended to avoid" the confusion that might be associated with more frequent reapportionments.

The County misreads *Reynolds*. The Court in *Reynolds* instituted a requirement of periodic reapportionment based upon current population data. It stated that decennial reapportionment "would clearly meet the minimal requirements," and less frequent reapportionment would "assuredly be constitutionally suspect." 377 U.S. at 583-84, 84 S. Ct. at 1393. The Court further noted, however, that while more frequent apportionment was not constitutionally required, it would be "constitutionally permissible," and even "practicably desirable." *Id.* Thus, *Reynolds* did not institute a constitutional maximum frequency for reapportionment; rather, it set a floor below which such frequency may not constitutionally fall.

B. Use of Post-1980 Population Data

The County further claims that the district court erred in considering any data other than data from the 1980 census. Since the 1980 census data does not suggest the possibility of creating a Hispanic majority district, the County claims that the plaintiffs must lose in their 1988 claim to redistrict to provide for such a district. This claim, too, misinterprets the case law on which it purports to rest.

Since *Reynolds* would permit redistricting between censuses, it appears to assume that post-census data may be used as a basis for such redistricting. Furthermore, in a subsequent opinion the Court noted with approval the possibility of using predictive data in addition to census data in designing decennial reapportionment plans. The court stated that "[s]ituations may arise where substantial population shifts over such a period [the ten years be-

tween redistricting] can be anticipated. Where these shifts can be predicted with a high degree of accuracy, States that are redistricting may properly consider them." *Kirpatrick v. Preisler*, 394 U.S. 526, 535, 89 S. Ct. 1225, 1231, *reh'g denied*, 395 U.S. 917, 89 S. Ct. 1737 (1969). *See also Burns v. Richardson*, 384 U.S. 73, 91, 86 S. Ct. 1286, 1296 (1966) ("the Equal Protection Clause does not require the States to use total population figures derived from the federal census as the standard by which . . . substantial population equivalency is to be measured."). The Court has never hinted that plaintiffs claiming present Voting Rights Act violations should be required to wait until the next census before they can receive any remedy.

The Fifth Circuit has held that non-census data may be considered in reapportionments between censuses if the relevant information cannot be obtained through census data. *Westwego Citizens for Better Government v. Westwego*, 906 F.2d 1042, 1045-46 (5th Cir. 1990). Such a practice makes sense not only where, as in *Westwego* itself, census data on the population in question was unavailable because of the limited nature of the compilations and manipulations performed by the census; it is also logical where, as here, the census data is almost a decade old and therefore no longer accurate.³

The County contests the validity of the population statistics that the court employed. The district court's findings, however, present an extensive review of the data itself and of the methodology that produced it, coupled with an inquiry into its validity. The County has not offered any reason why the district court

³In *McNeil v. Springfield Park District*, 851 F.2d 937, 946 (7th Cir. 1988), *cert. denied*, 109 S. Ct. 1769 (1989), the Seventh Circuit found that in order to prove an effects violation from postcensus data, the data used must be of a clear and convincing nature, and that "estimates based on past trends are generally not sufficient to override 'hard' decennial census data." We see no reason to impose this high standard in a case where intentional discrimination has been proved, and the data is merely to be used in fashioning a remedy.

should have rejected this data, other than the fact that it does not come from the census. Since it was permissible for the district court to rely on non-census data, we find that the district court did not err in its assessment of the size and geographic distribution of the Hispanic population in Los Angeles.

The district court's findings concerning vote dilution may be set aside only if they are clearly erroneous. *Gingles*, 478 U.S. at 79, 106 S. Ct. at 2781. The findings at issue here were amply supported by the evidence that was before the district court.

C. Apportionment Based on Population Rather than Voting Age Citizen Data

The County contends that because the district court's reapportionment plan employs statistics based upon the total population of the County, rather than the voting population, it is erroneous as a matter of law. The County points out that many Hispanics in the County are noncitizens, and suggests that therefore a redistricting plan based upon population alone, in which Hispanics are concentrated in one district, unconstitutionally weights the votes of citizens in that district more heavily than those of citizens in other districts.

The district court adopted a plan with nearly equal numbers of persons in each district.⁴ The districts deviated in population by sixty-eight hundredths of one percent. (Findings and Order Regarding Remedial Redistricting Plan and Election Schedule, [App. A-154]).

⁴ District	Total Pop.	White	Black	Hispanic	Other
1	1,779,835	12.4	2.1	71.2	14.3
2	1,775,665	15.0	38.6	35.3	11.1
3	1,768,124	60.9	3.9	25.5	9.7
4	1,776,240	53.9	4.3	26.6	15.2
5	1,780,224	57.1	5.9	24.3	12.6
Total	8,880,109	39.8	11.0	36.6	12.6

The variance is larger when the number of voting age citizens in each district is considered.⁵

The County is correct in pointing out that *Burns v. Richardson*, 384 U.S. 73, 91-91, 86 S. Ct. 1286, 1296-97 (1966), seems to permit states to consider the distribution of the voting population as well as that of the total population in constructing electoral districts. It does not, however, *require* states to do so. In fact, the *Richardson* Court expressly stated that “[t]he decision to include or exclude [aliens or other nonvoters from the apportionment base] involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere.” 384 U.S. at 92, 86 S. Ct. at 1296-97. *Richardson* does not overrule the portion of *Reynolds v. Sims*, 377 U.S. 533, 568, 84 S. Ct. 1362, 1385 (1964), that held that apportionment for state legislatures must be made upon the basis of population.

In *Reynolds*, 377 U.S. at 560-61, 84 S. Ct. at 1381, the Supreme Court applied to the apportionment of state legislative seats the standard enunciated in *Wesberry v. Sanders*, 376 U.S. 1, 84 S. Ct. 526 (1964), that “the fundamental principle of representative government is one of equal representation for equal number of people, without regard to race, sex, economic status, or place of residence within a state.” This standard derives from the constitutional requirement that members of the House of Representatives are elected “by the people,” *Reynolds*, 377 U.S. at 560, 84 S. Ct. at 1381, from districts “founded on the aggregate number of inhabitants of each state” (James Madison, *The Federalist*, No. 54 at 369 (J. Cooke ed. 1961)); U.S. Const. art. I, § 2. The framers

⁵ District	Total Pop.	White	Black	Hispanic	Other
1	707,651	25.4	3.5	59.4	11.6
2	922,180	23.8	50.8	17.1	8.3
3	1,098,663	77.0	4.3	13.9	4.7
4	1,081,089	67.5	4.4	19.7	8.4
5	1,088,388	69.8	6.2	18.1	5.9
Total	4,897,971	55.8	13.4	23.3	7.5

were aware that this apportionment and representation base would include categories of persons who were ineligible to vote—women, children, bound servants, convicts, the insane, and at a later time, aliens. *Fair v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980). Nevertheless, they declared that government should represent *all* the people. In applying this principle, the *Reynolds* Court recognized that the people, including those who are ineligible to vote, form the basis for representative government. Thus population is an appropriate basis for state legislative apportionment.

Furthermore, California state law requires districting to be accomplished on the basis of total population. California Elections Code § 35000. No part of the holding in *Richardson*, or in any other case cited by the appellants, suggests that the requirements imposed by such state laws may be unconstitutional. In fact, in *Gaffney v. Cummings*, 412 U.S. 735, 747, 93 S. Ct. 2321, 2328 (1973), the Court approved a redistricting based on total population, but with some deviations based upon consideration of political factors. In approving that plan, the Court expressly noted that districting based upon total population would lead to some disparities in the size of the eligible voting population among districts. These differences arise from the number of people ineligible to vote because of age, alienage, or non-residence, and because many people choose not to register or vote. *Id.* at 746-47, 93 S. Ct. at 2328. The Court made no intimation that such disparities would render those apportionment schemes constitutionally infirm.

Even the limited latitude *Gaffney* affords state and local governments to depart from strict total population equality is unavailable here. The Supreme Court has held that unless a court ordering a redistricting plan can show that population variances are required by "significant state policies," that court must devise a plan that provides for districts of equal population. *Chapman v. Meier*, 420 U.S. 1, 24, 95 S. Ct. 751, 764 (1975). Since California

law requires equality of total population across districts, there are no locally relevant contrary policies.

There is an even more important consideration. Basing districts on voters rather than total population results in serious population inequalities across districts. Residents of the more populous districts thus have less access to their elected representative. Those adversely affected are those who live in the districts with a greater percentage of non-voting populations, including aliens and children. Because there are more young people in the predominantly Hispanic District 1 (34.5% of the L.A. County Hispanic population (Finding of Fact and Conclusions of Law re: County's Remedial Plan, [App. A-200 to A-201])), citizens of voting age, minors and others residing in the district will suffer diminishing access to government in a voter-based apportionment scheme.

The purpose of redistricting is not only to protect the voting power of citizens; a coequal goal is to ensure "equal representation for equal numbers of people." *Kirpatrick*, 394 U.S. at 531, 89 S. Ct. at 1229. Interference with individuals' free access to elected representatives impermissibly burdens their right to petition the government. *Eastern Railroad President's Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137, 81 S. Ct. 523, 539, *reh'g denied*, 365 U.S. 875, 81 S. Ct. 899 (1961). Since "the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives," this right to petition is an important corollary to the right to be represented. *Id.* Non-citizens are entitled to various federal and local benefits, such as emergency medical care and pregnancy-related care provided by Los Angeles County. California Welfare and Institutions Code §§ 14007.5; 17000. As such, they have a right to petition their government for services and to influence how their tax dollars are spent.

In this case, basing districts on voting population rather than total population would disproportionately affect these rights for

people living in the Hispanic district. Such a plan would dilute the access of voting age citizens in that district to their representative, and would similarly abridge the right of aliens and minors to petition that representative. For over a century, the Supreme Court has recognized that aliens are "persons" within the meaning of the fourteenth amendment to the Constitution, entitled to equal protection. See *Yick Wo v. Hopkins*, 118 U.S. 356, 368, 6 S. Ct. 1064, 1070 (1886). This equal protection right serves to allow political participation short of voting or holding a sensitive public office. See *Bernal v. Fainter*, 467 U.S. 216, 104 S. Ct. 2312 (1984) (law that would have denied alien the right to become a notary public and thereby assist in litigation for the benefit of migrant workers struck down under strict scrutiny equal protection analysis); *Nyquist v. Mauclet*, 432 U.S. 1, 97 S. Ct. 2120 (1977) (state's interest in educating its electorate does not justify excluding aliens from state scholarship program, since aliens may participate in their communities in ways short of voting). Minors, too, have the right to political expression. *Tinker v. Des Moines Community School Dist.*, 393 U.S. 503, 511-13, 89 S. Ct. 733, 739-40 (1969). To refuse to count people in constructing a districting plan ignores these rights in addition to burdening the political rights of voting age citizens in affected districts.

The principles were well expressed by the California Supreme Court in its opinion in *Calderon v. City of Los Angeles*, 4 Cal.3d 253, 258-59, 93 Cal.Rptr. 361, 365-66 (1971), in holding that the United States Constitution requires apportionment by total population, not by voting population.

Although we are, of course, constrained by the supremacy clause (U.S. Const. art VI, cl.2) to follow decisions of the Supreme Court on matters of constitutional interpretation, we emphasize that we do so here not only from constitutional compulsion but also as a matter of conviction. Adherence to a population standard, rather than one based on registered voters, is more likely to guarantee that those who cannot or do not cast a ballot may still have some voice in government.

Thus, a 17-year-old, who by state law is prohibited from voting, may still have strong views on the Vietnam War which he wishes to communicate to the elected representative from his area. Furthermore, much of a legislator's time is devoted to providing services and information to his constituents, both voters and nonvoters. A district which, although large in population, has a low percentage of registered voters would, under a voter-based apportionment, have fewer representatives to provide such assistance and to listen to concerned citizens. (footnote omitted).

Judge Kozinski's dissent would require districting on the basis of voting capability. Adoption of Judge Kozinski's position would constitute a denial of equal protection to these Hispanic plaintiffs and rejection of a valued heritage.

D. Rejection of the Supervisors' Proposal

After it found that the County's districting plan was statutorily and constitutionally invalid, the district court gave the County 20 days to develop and propose a remedial plan of its own. The County submitted a plan, but the district court rejected it because, although it did create a district that had a Hispanic majority, it unnecessarily fragmented other Hispanic populations in the County. The district court found that such fragmentation posed an impediment to Hispanic political cohesiveness. Furthermore, the district court objected to the placement of the Hispanic majority district in a section controlled by a powerful incumbent, rather than in the one section that had a naturally occurring open seat, an open seat that was "in the heart of the Hispanic core." For these reasons, the district court found that the County's plan did not represent a good faith effort to remedy the violation. The County objects to the district court's rejection of its proposal. It argues that the district court may not substitute "even what it considers to be an objectively superior plan for an otherwise constitutionally and legally valid plan," citing *Wright v. City of Houston*, 806 F.2d 634 (5th Cir. 1986); *Seastrunk v. Burns*, 772 F.2d 143, 151 (5th Cir. 1985).

However, there appear to be at least two fundamental reasons why the district court was not required to defer to the plan put forward by the supervisors in this case. First, as two of the supervisors themselves point out in their separate brief on the issue, the plan that the Board submitted to the district court could not, under the County's charter, have been considered a *Board* Redistricting plan, because only three members voted in favor of it, not the four required for such matters. Los Angeles County Charter, Art. II, Sec. 7 (1985). Thus, the proposal was not an act of legislation; rather, it was a suggestion by some members of the Board, entitled to consideration along with the other suggestions that have been received. Second, the district court found that it did not constitute a good faith attempt to remedy the violation because, *inter alia*, it used unnatural configurations in order to place an Anglo incumbent in the new Hispanic district, and it fragmented some Hispanic communities in other districts in the same manner in which the Board had deliberately diluted Hispanic influence in the past.

E. The County's Claim of Reverse Discrimination

The County argues that, by deliberately creating a district with a Hispanic majority, the district court engaged in discrimination in favor of a minority group of the type forbidden by *City of Richmond v. J.A. Croson Co.*, 488 U.S. 476, 109 S. Ct. 706 (1989). It claims to have had a valid defense based upon the district court's "creation of an equal protection violation in order to establish a Section 2 claim." The district court erred, it contends, in refusing to address this constitutional defense.

The County makes no suggestion, however, that the redistricting plan somehow dilutes the voting strength of the Anglo community. The deliberate construction of minority controlled voting districts is exactly what the Voting Rights Act authorizes. Such districting, whether worked by a court or by a political entity in the first instances, does not violate the constitution. *United Jewish*

Organizations v. Carey, 430 U.S. 144, 97 S. Ct. 996 (1977). For that reason, the district court properly refused to consider the appellants' constitutional defense.

III. *The Flores Appeal*

Sarah Flores appeals from the District Court's denial of her petition to intervene. Her petition was based upon her interest in the outcome of the suit as a candidate in the election that stood to be invalidated. Under the plan adopted by the district court, she would be eligible to run for election in the new Hispanic district. Under the status quo, she was scheduled to participate in a runoff election against one other candidate. The district court dismissed her petition to intervene because it was untimely and because, in any event, the interests that she claimed to advocate either were already represented in the case or had not been proven to exist.

A party is entitled to intervene as of right under Fed. R. Civ. Pro. 24(a)(2) if that party moves to do so in a timely fashion and asserts an interest in the subject of the litigation, shows that the asserted interest stands to be impeded or impaired if the litigation goes forth without intervention, and demonstrates that the interest is not adequately represented by the parties to the litigation. *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527 (9th Cir. 1983). In determining whether a motion to intervene is timely, a court must consider whether intervention will cause delay that will prejudice the existing parties. *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984).

Where a would-be intervenor does not demonstrate interests sufficiently weighty to warrant intervention as of right, the court may nevertheless consider eligibility for permissive intervention under Fed. R. Civ. Pro. 24(b)(2). Courts will allow such intervention where the intervenor raises a claim that has questions of law or fact in common with the main case, shows independent

grounds for jurisdiction, and moves to intervene in a timely fashion. *Venegas v. Skaggs*, 867 F.2d 527, 529 (9th Cir. 1989), *aff'd*, 110 S. Ct. 1678 (1990). The decision to grant or deny this type of intervention is discretionary, subject to considerations of equity and judicial economy. *Id.* at 530-31. Sarah Flores sought both intervention as of right and, in the alternative, permissive intervention in the proceedings below. The district court denied intervention on either ground.

This ruling was correct. Flores knew that this lawsuit was pending at the time when she decided to run in the election, and knew that part of the relief sought was a redistricting plan that could affect the outcome of that election. She did not petition to intervene until four months after she declared her candidacy, which was almost two years after the proceedings had been instituted. While Flores points out that the entry of a trial into a "new stage" may be the appropriate point for intervention, such is only the case where the new phase develops as a result of a change in the law or the factual circumstances. *See United States v. Oregon*, 745 F.2d 550 (9th Cir. 1984). Here, the new phase came about in the general progression of the case to a close. It was a foreseeable part of a chain of events. Therefore, Flores' delay cannot be excused on this ground. Introduction of a new party at that late stage could have resulted in irreversible prejudicial delay in a case where time was of the essence.

IV. *The Election*

A motions panel of this court entered an order which had the effect of staying the county's election procedures pending our decision. Because the time schedule originally contemplated by the district court's order can no longer be followed, we **RE-MAND** for the district court to impose a new schedule pursuant to which the primary, and if necessary, a general election can be conducted. Because it is imperative that such election procedures go forward as soon as practicable the opinion of this panel shall constitute the mandate.

The judgment of the district court on liability and its decision as to remedy are **AFFIRMED**. The scheduling provisions of the district court's order of August 6, 1989 are **VACATED** and the matter is **REMANDED** for the purpose of determining the schedule for elections under the district court's redistricting plan. We issue the mandate now because 42 U.S.C. § 1971(g) requires that voting rights cases "be in every way expedited."

AFFIRMED IN PART; VACATED IN PART AND REMANDED. THE MANDATE SHALL ISSUE FORTHWITH.

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Garza v. County of Los Angeles, et al.

No. 90-55944

KOZINSKI, Circuit Judge, concurring and dissenting in part:

I. Liability

A determination by a federal court that elected officials have intentionally discriminated against some of their constituents is a matter of no little moment. While I join the liability portion of Judge Schroeder's opinion without reservation, I write briefly to

explain, for the benefit of those not conversant with the esoterica of federal discrimination law, what today's ruling means—and what it does not.

First the good news. Nothing in the majority opinion, or in the district court's findings which we review and approve today, suggests that the County supervisors who adopted the 1981 reapportionment—all of whom are still in office—harbored any ethnic or racial animus toward the Los Angeles Hispanic community. In other words, there is no indication that what the district court found to be intentional discrimination was based on any dislike, mistrust, hatred or bigotry against Hispanics or any other minority group. Indeed, the district court seems to have found to the contrary. *See Garza v. County of Los Angeles*, Nos. 88-5143 & 88-5435, [App. A-54 to A-55] (C.D. Cal. June 4, 1990) ("The Court believes that had the Board found it possible to protect their incumbencies while increasing Hispanic voting strength, they would have acted to satisfy both objectives.")⁶

Which brings us to what this case *does* stand for. When the dust has settled and local passions have cooled, this case will be remembered for its lucid demonstration that elected officials engaged in the single-minded pursuit of incumbency can run roughshod over the rights of protected minorities. The careful findings of the district court graphically document the pattern—a continuing practice of splitting the Hispanic core into two or more

⁶The lay reader might wonder if there can be intentional discrimination without an invidious motive. Indeed there can. A simple example may help illustrate the point. Assume you are an Anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.

districts to prevent the emergence of a strong Hispanic challenger who might provide meaningful competition to the incumbent supervisors. The record is littered with telltale signs that reapportionments going back at least as far as 1959 were motivated, to no small degree, by the desire to assure that no supervisorial district would include too much of the burgeoning Hispanic population.

But the record here illustrates a more general proposition: Protecting incumbency and safeguarding the voting rights of minorities are purposes often at war with each other. Ethnic and racial communities are natural breeding grounds for political challengers; incumbents greet the emergence of such power bases in their districts with all the hospitality corporate managers show hostile takeover bids. What happened here—the systematic splitting of the ethnic community into different districts—is the obvious, time-honored and most effective way of averting a potential challenge. Incumbency carries with it many other subtle and not-so-subtle advantages, see Chemerinsky, *Protecting the Democratic Process: Voter Standing to Challenge Abuses of Incumbency*, 49 Ohio St. L.J. 773-81 (1988), and incumbents who take advantage of their status so as to assure themselves a secure seat at the expense of emerging minority candidates may well be violating the Voting Rights Act. Today's case barely opens the door to our understanding of the potential relationship between the preservation of incumbency and invidious discrimination, but it surely gives weight to the Seventh Circuit's observation that "many devices employed to preserve incumbencies are necessarily racially discriminatory." *Ketchum v. Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984) *cert. denied*, 471 U.S. 1135 (1985).

The Supreme Court in *Davis v. Bandemer*, 478 U.S. 109 (1986), left open whether and under what circumstances political gerrymandering may amount to a violation of the Voting Rights Act. *Id.* at 118 n.8. The record before us strongly suggests that politi-

cal gerrymandering tends to strengthen the grip of incumbents at the expense of emerging minority communities. Where, as here, the record shows that ethnic or racial communities were split to assure a safe seat for an incumbent, there is a strong inference—indeed a presumption—that this was a result of intentional discrimination, even absent the type of smoking gun evidence uncovered by these plaintiffs. State and local officials nationwide might well take this lesson to heart as they go about the task of decennial redistricting.

II. *The Remedy*

While I enthusiastically join the majority as to liability, I have two points of disagreement as to the remedy. The first is really just a quibble: I agree with the majority that the County's proposed plan was not entitled to any deference. The Los Angeles County Charter requires at least four supervisors to pass a reapportionment plan. Los Angeles County Charter Art. 2, § 7. Since two of the five supervisors opposed the plan proposed by the County, *see* maj. op. [App. A-24], it is obvious that the "proposal was not an act of legislation; rather, it was a suggestion by some members of the Board," *id.*, not entitled to the special deference afforded apportionment plans that are the legislative act of the apportioning body.

The majority's alternative reason for upholding the district court's rejection of the plan, contained in the last sentence of part II.D of the opinion, is therefore dicta, and dicta about which I harbor some doubt. It is not at all clear to me that, had the Board of Supervisors adopted the apportionment plan proposed by the County, the reasons relied on by the district court for rejecting the plan would be sufficient. Certainly the issue is far more difficult than the majority's casual reference acknowledges. I would prefer to see a more detailed discussion of the issue before adopting the majority's conclusion as the law of the circuit, but a more extensive discussion is inappropriate, as it's all dicta anyhow. The

more prudent course would be to reserve the issue for a day when it is squarely presented to us.

My second disagreement is more substantive; I cannot agree with the majority's conclusion, contained in part II.C of the opinion, that the district court's reapportionment plan complies with the one person one vote principle announced by the Supreme Court in *Reynolds v. Sims*, 377 U.S. 533 (1964). While the majority may ultimately be vindicated, its conclusion is hard to square with what the Supreme Court has said on this issue up to now.

A. Before plumbing the doctrinal waters in this murky area of constitutional law, it is worth stating exactly what the County is complaining about. In drawing the remedial plan in this case, the district court adhered closely to state law which calls for supervisorial districts that are equal in population. In doing so, the court wound up with two districts where the numbers of voting age citizens are markedly lower than those in the three other districts.⁷ The disparity is particularly great between Districts 1 and 3. District 1 has 707,651 eligible voters while District 3 has 1,098,663, a difference of 391,012, about 55% of the eligible voters in District 1. Since it takes a majority in each district to elect a supervisor, this means that the supervisor from District 1 can be elected on the basis of 353,826 votes (less than the *difference*

⁷The district court's remedy finding No. 5 sets forth the relevant figures for the districting plan it adopted:

District	Total	White	Black	Hispanic	Other
1	707,651	25.4	3.5	59.4	11.6
2	922,180	23.8	50.8	17.1	8.3
3	1,098,663	77.0	4.3	13.9	4.7
4	1,081,089	67.5	4.4	19.7	8.4
5	1,088,388	69.8	6.2	18.1	5.9
TOTAL	4,897,971	55.8	13.4	23.3	7.5

Findings and Order Regarding Remedial Redistricting Plan and Election Schedule [App. A-154] (filed Aug. 6, 1990).

between the two districts), while the supervisor from District 3 requires at least 549,332 votes. Put another way, a vote cast in District 1 counts for almost twice as much as a vote cast in District 3.

B. Does a districting plan that gives different voting power to voters in different parts of the county impair the one person one vote principle even though raw population figures are roughly equal? It certainly seems to conflict with what the Supreme Court has *said* repeatedly. For example, in *Reynolds*, the Court stated: "Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable." 377 U.S. at 563. The Court also stated: "With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live," *id.* at 565; and "Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State," *id.* at 568;⁸ and "the basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives," *id.* at 567.

Almost identical language appears in numerous cases both before *Reynolds*, see, e.g., *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964) ("To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected 'by the People.' "); *Gray v. Sanders*, 372 U.S. 368, 379 (1963) ("Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income,

⁸This language is also quoted in *Gaffney v. Cummings*, 412 U.S. 735, 744 (1973).

and wherever their home may be in that geographical unit.”⁹); and after, *see, e.g., Hadley v. Junior College Dist.*, 397 U.S. 50, 56 (1970) (“[W]hen members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.”); *Chapman v. Meier*, 420 U.S. 1, 24 (1975) (“All citizens are affected when an apportionment plan provides disproportionate voting strength, and citizens in districts that are underrepresented lose something even if they do not belong to a specific minority group.”); *Lockport v. Citizens for Community Action*, 430 U.S. 259, 265 (1977) (“[I]n voting for their legislators, all citizens have an equal interest in representative democracy, and . . . the concept of equal protection therefore requires that their votes be given equal weight.”).

The Court adhered to the same formulation as recently as two Terms ago: “In calculating the deviation among districts, the relevant inquiry is whether ‘the vote of any citizen is approximately equal in weight to that of any other citizen.’ ” *Board of Estimate v. Morris*, 109 S. Ct. 1433, 1441 (1989) (quoting *Reynolds*, 377 U.S. at 579).

Despite these seemingly clear and repeated pronouncements by the Supreme Court, the majority’s position is not without support, as the Court has also said things suggesting that equality of population is the guiding principle. *See, e.g., Reynolds*, 377 U.S. at 568 (“We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis.”); *Mahan v. Howell*, 410 U.S. 315, 321 (1973) (“[T]he basic constitutional principle [is] equality of population among the districts.”); *Kirkpatrick v. Preisler*, 394 U.S. 526, 530 (1969) (“[E]qual representation for equal numbers of people [is] the

⁹This language is also quoted in *Moore v. Ogilvie*, 394 U.S. 814, 817 (1969), and *Reynolds*, 377 U.S. at 557-58.

fundamental goal for the House of Representatives.' ” (quoting *Wesberry*, 376 U.S. at 18)).

In most cases, of course, the distinction between the two formulations makes no substantive difference: Absent significant demographic variations in the proportion of voting age citizens to total population, apportionment by population will assure equality of voting strength and vice versa. Here, however, we *do* have a demographic abnormality, and the selection of an apportionment base does make a material difference: Apportionment by population can result in unequally weighted votes, while assuring equality in voting power might well call for districts of unequal population.

How does one choose between these two apparently conflicting principles? It seems to me that reliance on verbal formulations is not enough; we must try to distill the theory underlying the principle of one person one vote and, on the basis of that theory, select the philosophy embodied in the fourteenth amendment. Coming up with the correct theory is made no easier by the fact that the Court has been less than consistent in its choice of language and that, as Justice Harlan pointed out in his *Reynolds* dissent, “both the language and history of the controlling provisions of the Constitution [have been] wholly ignored” by the Court, 377 U.S. at 591 (Harlan, J., dissenting), making it impossible to rely on the Constitution for any meaningful guidance. Still we must try.

C. While apportionment by population and apportionment by number of eligible electors normally yield precisely the same result, they are based on radically different premises and serve materially different purposes. Apportionment by raw population embodies the principle of equal representation; it assures that all persons living within a district—whether eligible to vote or not—have roughly equal representation in the governing body.¹⁰ A

¹⁰It is established, of course, that an elected official represents all persons residing within his district, whether or not they are eligible to vote and whether or not they voted for the official in the preceding election. See *Davis v. Bandemer*, 478 U.S. 109, 132 (1986) (plurality).

principle of equal representation serves important purposes: It assures that constituents have more or less equal access to their elected officials, by assuring that no official has a disproportionately large number of constituents to satisfy. Also, assuming that elected officials are able to obtain benefits for their districts in proportion to their share of the total membership of the governing body, it assures that constituents are not afforded unequal government services depending on the size of the population in their districts.

Apportionment by proportion of eligible voters serves the principle of electoral equality. This principle recognizes that electors—persons eligible to vote—are the ones who hold the ultimate political power in our democracy. This is an important power reserved only to certain members of society; states are not required to bestow it upon aliens, transients, short-term residents, persons convicted of crime, or those considered too young. *See* J. Nowak, R. Rotunda & J.N. Young, *Constitutional Law* § 14.31, at 722-23 (3d ed. 1986).

The principle of electoral equality assures that, regardless of the size of the whole body of constituents, political power, as defined by the number of those eligible to vote, is equalized as between districts holding the same number of representatives. It also assures that those eligible to vote do not suffer dilution of that important right by having their vote given less weight than that of electors in another location. Under this paradigm, the fourteenth amendment protects a right belonging to the individual elector and the key question is whether the votes of some electors are materially undercounted because of the manner in which districts are apportioned.

It is very difficult, in my view, to read the Supreme Court's pronouncements in this area without concluding that what lies at the core of one person one vote is the principle of electoral equality, not that of equality of representation. To begin with, the name

by which the court has consistently identified this constitutional right—one person one vote—is an important clue that the Court's primary concern is with equalizing the voter power of electors, making sure that each voter gets one vote—not two, five or ten, *Reynolds*, 377 U. S. at 562; or one-half.

But we need not rely on inferences from what is essentially an aphorism, for the Court has told us exactly and repeatedly what interest this principle serves. In its most recent pronouncement in the area, the Court stated: "*The personal right to vote is a value in itself, and a citizen is, without more and without mathematically calculating his power to determine the outcome of an election, shortchanged if he may vote for only one representative when citizens in a neighboring district, of equal population, vote for two; or to put it another way, if he may vote for one representative and the voters in another district half the size also elect one representative.*" *Morris*, 109 S. Ct. at 1440 (emphasis added).

References to the personal nature of the right to vote as the bedrock on which the one person one vote principle is founded appear in the case law with monotonous regularity. Thus, in *Hadley v. Junior College District*, the Court stated: "[T]he Fourteenth Amendment requires that the trustees of this junior college district be apportioned in a manner that does not deprive any voter of his right to have his own vote given as much weight, as far as is practicable, as that of any other voter in the junior college district." 397 U.S. at 52. The Court further explained: "[A] qualified voter has a constitutional right to vote in elections without having his vote wrongfully denied, debased, or diluted," *id.* (footnote omitted); and "This Court has consistently held in a long series of cases, that in situations involving elections, the States are required to insure that each person's vote counts as much, insofar as it is practicable, as any other person's," *id.* at 54 (footnote omitted); and "once a State has decided to use the process of popular election and 'once the class of voters is chosen and their qualifications specified, we see no constitutional way by which

equality of voting power may be evaded,' " *id.* at 59 (quoting *Gray v. Sanders*, 372 U.S. at 381).

Reynolds itself brims over with concern about the rights of citizens to cast equally weighted votes: "[T]he judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's citizens which constitutes an impermissible impairment of their constitutionally protected right to vote." 377 U.S. at 561. Again: "Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature." *Id.* at 565.¹¹ And yet again: "And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id.* at 555. *Reynolds* went so far as to suggest that "[t]o the extent that a citizen's right to vote is debased, he is that much less a citizen." *Id.* at 567.

While the Court has repeatedly expressed its concern with equalizing the voting power of citizens as an ultimate constitutional imperative—akin to protecting freedom of speech or freedom of religion—its various statements in support of the principle of equal representation have been far more conditional. Indeed, a careful reading of the Court's opinions suggests that equalizing total population is viewed not as an end in itself, but as a means of achieving electoral equality. Thus, the Court stated in *Reynolds*: "[T]he overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State." *Id.* at 579 (emphasis added). This language has been quoted in numerous subsequent cases. See *Gaffney*, 412 U.S. at 744; *Mahan v. Howell*, 410 U.S. 315, 322 (1973); *Burns*,

¹¹This language is also quoted in *Whitcomb v. Chavis*, 403 U.S. 124, 141 (1971).

384 U.S. at 91 n.20. In *Connor v. Finch*, 432 U.S. 407, 416 (1977), the Court stated the proposition as follows: "The Equal Protection Clause requires that legislative districts be of nearly equal population, *so that* each person's vote may be given equal weight in the election of representatives." (emphasis added).¹²

Particularly indicative of the subservience of the representational principle to the principle of electoral equality is *Gaffney v. Cummings*, 412 U.S. 735 (1973), on which the majority mistakenly relies. *Gaffney* deals with the question of how much variation in population is permissible in effectuating the one person one vote principle of *Reynolds*. The Supreme Court held that absolute mathematical precision is not necessary. Total population, the Court pointed out, is only a proxy for equalizing the voting strength of eligible voters. But, the Court noted, it is not a perfect proxy; voters might not be distributed homogeneously throughout the population, for example. Therefore, "it makes little sense to conclude from relatively minor 'census population' variations among legislative districts that any person's vote is being substantially diluted." *Gaffney*, 412 U.S. at 745-46. The Court continued:

What is more, it must be recognized that total population, even if absolutely accurate as to each district when counted, is nevertheless *not a talismanic measure of the weight of a person's vote under a later adopted reapportionment plan*. The United States census is more of an event than a process. It measures population at only a single instant in time. District populations are constantly changing, often at different rates in either direction, up or down. Substantial differentials in population growth rates are striking and well-known phenomena. So, too, *if it is the weight of a person's vote that matters*, total population—even if stable and accurately

¹²The Court has continued to justify the requirement of equality of populations as a means of assuring that "each citizen's portion [is] equal." *Morris*, 109 S. Ct. at 1438; see also *Lockport v. Citizens for Community Action*, 430 U.S. 259, 264 (1977) ("[I]t has been established that the Equal Protection Clause cannot tolerate the disparity in individual voting strength that results when elected officials represent districts of unequal population . . .").

taken—may not actually reflect that body of voters whose votes must be counted and weighed for the purposes of reapportionment, because “census persons” are not voters.

Id. at 746 (emphasis added, footnotes omitted).

Finally, there is the teaching of *Burns v. Richardson*, 384 U.S. 73 (1966), which the majority dismisses far too lightly. Because it is the only Supreme Court case applying the one person one vote principle in a situation where there were large numbers of residents not eligible to vote—it being the only case where there was a divergence between the representational principle and the principle of electoral equality—the case deserves a more careful examination. While *Burns* does not, by its terms, purport to require that apportionments equalize the number of qualified electors in each district, the logic of the case strongly suggests that this must be so. As noted earlier, in a situation such as ours—as that in *Burns*—one or the other of the principles must give way. If the ultimate objective were to serve the representational principle, that is to equalize populations, *Burns* would be inexplicable, as it approved deviations from strict population equality that were wildly in excess of what a strict application of that principle would permit.¹³

Burns can only be explained as an application of the principle of electoral equality; the Court approved the departure from strict population figures because raw population did not provide an accurate measure of whether the voting strength of each citizen

¹³In *Burns*, the ninth and tenth districts contained 28% of Oahu's total population, yet were entitled to only 6 representatives. The fifteenth and sixteenth districts, on the other hand, contained only 21% of the population, but were entitled to 10 representatives. *Burns*, 384 U.S. at 90-91 & n.18. Thus, in districts 9 and 10, there was one representative for every 4.67% of Oahu's total population, whereas in districts 15 and 16, there was one representative for every 2.1% of the population. This deviation of well over 100%—122%, in fact—far exceeds the population deviations held permissible by the Supreme Court in the line of cases discussed below. See App. A-42 to A-43 *infra*.

was equal. Thus, while *Burns* spoke in permissive terms, its logic is far more categorical.

The only other way to explain the result in *Burns* is to assume that there is no principle at all at play here, that one person one vote is really nothing more than a judicial squinting of the eye, a rough-and-ready determination whether the apportionment scheme complies with some standard of proportionality the reviewing court happens to find acceptable. I am reluctant to ascribe such fluidity to a constitutional principle that the Supreme Court has told us embodies "fundamental ideas of democratic government," *Wesberry*, 376 U.S. at 8.¹⁴

When considered against the Supreme Court's repeated pronouncements that the right being protected by the one person one vote principle is personal and limited to citizens, the various arguments raised by the majority do not carry the day. Thus, the Court's passing reference in *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969), to "prevent[ing] debasement of voting power and diminution of access to elected representatives" suggests only that the Court did not consider the possibility that the twin goals might diverge in some cases. As *Kirkpatrick* contains no discussion of the issue, it provides no clue as to which principle has primacy where there is a conflict between the two.

Similarly unpersuasive is the majority's citation of cases that hold that aliens and the young enjoy many constitutional rights on the same basis as citizens. Maj. op. [App. A-21 to A-22]. One right aliens and children do not enjoy is the right to vote. Insofar as the Court views its one person one vote jurisprudence as protecting the right to vote enjoyed only by citizens, see [App. A-32 to A-34] *supra*, it's entirely beside the point what other rights noncitizens may enjoy. If, as I suggest, one person one vote pro-

¹⁴One's resolve in this regard is put to the test by *Brown v. Thomson*, 462 U.S. 835 (1983). See *id.* at 850 (Brennan, J., dissenting); note [16] *infra*.

fects a right uniquely held by citizens, it would be a dilution of that right to allow noncitizens to share therein.¹⁵

Finally, I understand my colleagues to be suggesting that, as a matter of policy, the principle of equal representation is far wiser than the principle of electoral equality. Were I free to disregard the explicit and repeated statements of the Supreme Court, I might well find this argument persuasive. But I am not free to ignore what I regard as binding direction from the Supreme Court, so my own policy views on this matter make no difference.

All that having been said, I must acknowledge that my colleagues may ultimately have the better of the argument. We are each attempting to divine from language used by the Supreme Court in the past what the Court would say about an issue it has not explicitly addressed. While much of the language and some of the rationale of the Supreme Court's decisions clearly support my view, other language, as well as tradition, supports my colleagues. Were the Supreme Court to take up the issue, I would not be surprised to see it limit or abandon the principle of electoral-equality in favor of a principle of representational equality. But the implications of that decision must be considered by those who have the power to make such choices, not by us. My colleagues may well be looking into the future, but controlling guidance comes from the past.

¹⁵My colleagues also rely on the fact that apportionment for the House of Representatives is based on whole population figures. But for reasons explained by the Supreme Court in *Reynolds*, 377 U.S. at 571-77, arguments based on the "federal analogy" are "inapposite and irrelevant to state legislative redistricting schemes," *id.* at 573, and therefore are not particularly persuasive in the context of state and local apportionment cases. Congressional apportionments are governed by section 2 of the fourteenth amendment, which makes total population the apportionment base; it says nothing about state apportionments. If this provision were meant to govern state legislative apportionments, the principle of one person one vote, based on a separate part of the fourteenth amendment, would be superfluous.

D. Having concluded that it is the principle of electoral equality that lies at the heart of one person one vote, we must address whether the district court's plan nevertheless falls within acceptable limits. While the Supreme Court has not been completely consistent in its methodology, usually it creates hypothetical ideal districts (i.e., districts that contain precisely the same number of people) and then determines, in percentage terms, the degree of deviation between each of the actual districts and the ideal one. The maximum deviation is calculated by adding the percentage points that the largest district is above the ideal, to the percentage points the smallest is below. *See, e.g., Brown v Thomson*, 462 U.S. at 839, *Mahan*, 410 U.S. at 319. While the Court has always used raw population figures, not electors, there seems to be no reason to apply a different methodology when comparing numbers of electors.

Here, a hypothetical ideal district would contain 979,594 electors. *See* note [7] *supra*. Compared to this ideal district, the districts under the plan adopted below deviate as set forth in the following table:

<u>District</u>	<u># Electors</u>	<u>Raw Deviation</u>	<u>% Deviation</u>
1	707,651	-271,943	-28%
2	922,180	-57,414	-6%
3	1,098,663	+119,069	+12%
4	1,081,089	+101,495	+10%
5	1,088,388	+108,794	+11%

As this table demonstrates, the districts in the court-ordered plan contain very significant deviations from the ideal district. As expected, the greatest spread is between Districts 1 and 3, and it amounts to 40%. Equally significant are the individual deviations. Only one district, number 2, has a number of electors close to the norm, i.e., a deviation within single digits. Three of the districts have deviations between 10% and 20% and one district has a deviation nearly three times that amount—28%.

If I am right that it is qualified electors, not raw population figures, that count, these deviations fall far outside the acceptable range. The Supreme Court's cases in this area have defined three ranges of deviation that bear on the constitutionality of the plan. A maximum deviation of less than 10% is considered *de minimis* and will be acceptable without further inquiry. *White v. Register*, 412 U.S. 755, 763 (1973). Deviations somewhat above 10% may be acceptable if justified by compelling and legitimate interests. *See, e.g., Abate v. Mundt*, 403 U.S. 182, 184-85 (1971). And, the Court has stated quite clearly that deviations above this buffer range will not be acceptable at all, even if justified by the most compelling and legitimate interests. The Court has not precisely identified the upper range for this buffer category, but does not appear to have approved any plans having a maximum deviation over 20%.¹⁶

It should be noted that, in discussing the range of possible deviations, the Court in all of these cases was comparing total population figures. *Gaffney*, however, tells us that deviation in total population figures is permissible, to some extent at least, because raw population is only an approximation of the number of electors. 412 U.S. at 746. It may well be that where, as here, the comparison is between the number of electors, the permissible range of deviation is much narrower.

¹⁶The only contrary authority seems to be *Brown v. Thomson*, as to which it is not clear at all what the relevant deviation was. The only deviation mentioned by the majority and concurring opinions is 89%, which was the degree of deviation of one particularly small county. But the majority and concurrence go to great lengths to assure us that that is *not* the relevant figure; the two concurring Justices expressed "the gravest doubts that a statewide legislative plan with an 89% maximum deviation could survive constitutional scrutiny . . ." 462 U.S. at 850 (O'Connor, J., joined by Stevens, J., concurring). Because of the peculiar procedural posture of the case, it is hard to tell just what the court viewed as the relevant deviation; it might have been 23%, *see id.* at 860 n.6 (Brennan, J., dissenting), although, for the reasons explained by the dissent, this figure, like the theory of the majority, seems to make little sense.

Even if we apply to this case the ranges established by the Court in cases involving raw population figures, it is clear that the district court's plan falls far outside the permissible range. As far as I am aware, no plan has ever been approved with a maximum deviation of as much as 40%. If I read the Court's cases correctly, deviation that large could not be justified even by the most compelling reasons. Nor, do I believe, has the district court even advanced reasons that would permit it to go beyond the 10% *de minimis* range. Such reasons may exist, but they are not articulated in the record. Four out of the five districts therefore fall outside the acceptable range for purposes of one person one vote.

E. Having concluded that the district court's plan runs a-foul of the one person one vote principle, we arrive at the single most difficult issue in this case: To what extent, if any, this principle may have to give way when it collides with a remedial plan designed to cure the effects of discrimination.

There is, as far as I am aware, little or no guidance on this issue. All prior cases alleging violations of one person one vote involved a conflict between that constitutional principle and various interests advanced under state law. *See, e.g.,* [App. A-42 to A-43] *supra*. Under such circumstances, even if the state is found to have a rational and compelling interest in deviating from substantial district equality, this interest may not justify more than a small range of deviations; beyond that, the state's interest gives way to the constitutional imperative.

The balance may well be different where, as here, the competing interest is itself grounded in the fourteenth amendment or its derivative, the Voting Rights Act. What seems absolutely clear to me, however, is that the district court cannot simply ignore one person one vote in seeking to create a remedy. The Supreme Court has cautioned that district courts have "considerably narrower" discretion than state legislatures to depart from the ideal of one person one vote, and that "the burden of articulating spe-

cial reasons for following [policies that would result in a departure are] correspondingly higher." *Connor v. Finch*, 431 U.S. 407, 419-20 (1977). Moreover, "it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted." *Chapman v. Meier*, 420 U.S. 1, 27 (1975).

At the very least, it seems to me, the district court must make a determined effort to eliminate or minimize the electoral disparities within the districts, consistent with achieving the remedial purposes of the plan. In so doing, I should think the district court would have latitude of up to 20% maximum deviation from the ideal district, providing, of course, that it supplies an adequate explanation of why its purposes cannot be achieved within a narrower range.

What if the district court determines that it cannot construct an adequate remedial plan without going beyond the 20% maximum deviation range? Under one view of the matter, one person one vote would not provide an absolute constraint on the court's remedial powers, as the competing interest here is not state law—which necessarily takes a back seat to a constitutional imperative—but an interest of equivalent dignity, itself growing out of the same constitutional roots as one person one vote. Under this paradigm, the district court would be allowed, under certain circumstances, to go beyond the 20% buffer allowed by the earlier cases. The district court would have to make very specific findings on how it has sought to achieve substantial equality among the districts and why it has been unable to do so without sacrificing the remedial purpose of the plan. If supported by the record (i.e., if no one comes forward with a plan that can do what the district court says can't be done), I should think that a much greater deviation from the ideal plan would be permissible, quite possibly as much as the 40% maximum deviation here.

There is, however, another paradigm: A plausible case could be made that the district court gets no greater latitude when it

acts pursuant to the Voting Rights Act because its remedial powers are absolutely constrained by the principle of one person one vote. The argument in support of this position grows not out of some hierarchy of values, but out of the nature of the remedial process. A reapportionment plan designed to remedy unlawful discrimination can have one purpose and one purpose only: To put the victims of discrimination in the position they would have enjoyed had there been no discrimination. Here, for example, the object would be to create the type of district that would have existed had the supervisors not continually split the Hispanic core.

Even if we make the most favorable assumption about what might have been, we cannot conclude that the supervisors would have come up with a district that violated the constitutional constraint of one person one vote. Since we know that, in the normal course of events and in the absence of discrimination, no such district could have been created, no legitimate remedial purpose would be served by creating such a district now. Under this view of the matter, there would be no tension between the court's remedial power and the principle of one person one vote, and therefore no justification for going beyond the 20% buffer. Even departures beyond the 10% de minimis buffer could, under this paradigm, be justified only upon a showing that compelling circumstances in the county would, in the absence of discrimination, have resulted in districts of greater than de minimis disparity.¹⁷

It is unnecessary to explore this conundrum, however, as it seems absolutely clear that we must remand to the district court on this issue. To begin with, the district court constructed the remedial plan under the mistaken impression that it was constrained by the state law requirement that supervisorial districts

¹⁷The Court has been somewhat vague as to what interests justify departure beyond the 10% de minimis buffer, but the only one clearly identified has been a long-standing and genuine desire to maintain the integrity of political subdivisions. *Reynolds*, 377 U.S. at 578-81; *Abate*, 403 U.S. at 183, 187.

be equal in population. It is clear, however, that where state law runs up against a constitutional constraint such as one person one vote, state law must yield. It is most emphatically *not* the case, as the majority suggests, that a district court, in drafting a remedial plan, is constrained by state apportionment law where that law would violate the Constitution.

Remand is also appropriate because the district court was apparently not aware that it was, required to try—if at all possible—to construct a remedial plan that avoided the conflict between the two interests. Since the district court did not try, we do not know whether it is possible to reconcile both interests. A remand is necessary in order to find out. Only if it turns out that an effective remedial plan that also satisfies one person one vote cannot be constructed would I venture an opinion on the difficult question whether, to what extent and under what circumstances the principle of one person one vote must yield when the district court exercises its equitable powers to remedy the effects of past discrimination.

III. *Expedited Issuance of the Mandate*

Reluctantly, I must also part company with my colleagues in their decision to issue the mandate forthwith. As it is clear from this action that this panel will not grant a stay, we place an unnecessary burden upon the parties, the district judge, our own colleagues and the Justices above us.

I well understand the reason for haste; delaying an election any longer than absolutely necessary should not be done lightly. Consistent with that imperative, we have issued a significant opinion in an important and difficult case about three weeks after submission. No one can justly accuse us of sitting on our thumbs. Were the opinion unanimous, or were I convinced that our differences are relatively trivial, I would go along with expediting the mandate.

But we do not all agree. Moreover, our disagreement goes to the heart of the district court's remedial plan. Should there be

further review, any steps taken by the district court and the parties in implementing the majority opinion would be wasted. The more prudent course, it seems to me, would be to let the parties consider their options in a sober, unhurried fashion, as contemplated by the Federal Rules Appellate Procedure.

My able colleagues have advanced very compelling arguments as to why the one person one vote rule should be construed as embodying the principle of equal representation. I have suggested that much of the Court's language and rationale supports the opposite view, that it is the principle of electoral equality that lies at the heart of one person one vote. We are not in a position to resolve this issue, which grows out of a lack of meaningful guidance in a long series of Supreme Court opinions. Yet this issue will have immediate and growing significance as large populations of aliens are taking up residence in several of our largest states.¹⁸ The Supreme Court may deem it prudent to take up the issue before large-scale redistricting gets underway in 1991.

Given these considerations, I would preserve the opportunity to have the matter considered in a deliberative fashion, unhurried by the pendency of an election. For better or worse, the election was stayed, which allowed us to consider the case without the sword of Damocles hanging over our heads. I would offer the same opportunity for unhurried deliberation to our colleagues and to any of the Justices who might wish to consider the matter.

IV. Conclusion

This is a fascinating case. It poses many new questions which required the district court to sail into uncharted waters. For the most part, the district court—and the majority—got it right. But close is not close enough when important constitutional rights are at stake. I would order a limited remand for the district court to apply the teachings of *Reynolds v. Sims* and its progeny.

¹⁸See, e.g., Suro, *Behind the Census Numbers*, N.Y. Times, Sept. 16, 1990, § 4, at 4 col. 1.

FILED Nov. 7 1990
CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

YOLANDA GARZA; SALVADOR
LEDEZMA; RAYMOND PALACIOS;
MONICA TOVAR; GUADALUPE DE
LA GARZA,

Plaintiffs-Appellees,

v.

COUNTY OF LOS ANGELES, BOARD
OF SUPERVISORS, LOS ANGELES
COUNTY; DEANE DANA; PETER F.
SCHABARUM; KENNETH F. HAHN,

Defendants-Appellants/

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

and

LAWRENCE K. IRVIN;
SARAH FLORES,

Intervenors-Appellees,

v.

COUNTY OF LOS ANGELES, BOARD
OF SUPERVISORS, LOS ANGELES
COUNTY; DEANE DANA; PETER F.
SCHABARUM; KENNETH F. HAHN,

Defendants-Appellants.

No. 90-55944

D.C. #CV-88-5135-KN

O R D E R

Nos. 90-55945/
90-56024

D.C. #CV-88-5435-KN

Before: SCHROEDER, NELSON AND KOZINSKI, Circuit Judges.

Judges Schroeder and Nelson have voted to deny appellants' emergency motion for recall of mandate and stay of further issuance pending determination of petition for rehearing with suggestion for rehearing en banc and petition for writ of certiorari. Judge Kozinski would grant the motion.

The emergency motion is denied.

FILED 4 1990
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

United States Court
Central District of California

YOLANDA GARZA, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff,

v.

**COUNTY OF LOS ANGELES,
CALIFORNIA, LOS ANGELES
BOARD OF SUPERVISORS, et al.,**

Defendants.

LAWRENCE K. IRVIN, et al.,

Plaintiffs-Intervenors.

No. CV 88-5143 KN(Ex)

No. CV 88-5435 KN(Ex)

**FINDINGS OF
FACT AND
CONCLUSIONS
OF LAW**

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I. SUMMARY OF FINDINGS

The Court has spent the past several weeks since the conclusion of this trial on April 18, 1990, immersed in what the Supreme Court in *Thornburg v. Gingles* referred to as a "searching evaluation of 'past and present reality' " and on a " 'functional' view of the political process." 478 U.S. 30, 45 (1986) citing S.Rep. at 30, n.120, U.S. Code Cong. & Admin. News 1982, p. 208. The conclusion this Court reaches is that, on a fundamental level, the Hispanic community has sadly been denied an equal opportunity to participate in the political process and to elect candidates of their choice to the Board of Supervisors for this burgeoning County.

As the findings below set forth, plaintiffs have adequately demonstrated, based on the totality of the circumstances, that the 1981 redistricting plan adopted by the Board of Supervisors violated Section 2 of the Voting Rights Act and the equal protection clause of the Fourteenth Amendment.

Specifically, the Court finds that the Hispanic community is sufficiently large and geographically compact such that a five district plan can be drawn in which Hispanics comprise a majority of the citizen voting age population in one of the five districts. The post-1980 estimates of citizen voting age population, based upon PEPS data and the special tabulation of voting age citizens by the Census Bureau, are reliable as an alternative means of proof that under current conditions it is possible to create a supervisorial district with an Hispanic citizen voting age population majority.

Further, even if the Court were to use 1980 Census data, plaintiffs have established through illustrative plans that Hispanic voting age citizens had the potential to elect the candidate of their choice absent a clear citizen voting age majority. It would be myopic, on these facts and circumstances, for the Court to apply the bright line 50 percent requirement set forth by the Ninth

Circuit in *Romero v. City of Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1989), as an absolute measure of undiluted minority voting strength. While this Court can imagine a number of circumstances in which the 50 percent figure is dispositive, as Justice O'Connor stated in her concurring opinion in *Gingles*:

“[T]here is no indication that Congress intended to mandate a single, universally applicable standard for measuring undiluted minority voting strength, regardless of local conditions and regardless of the extent of past discrimination against minority voters in a particular State or political subdivision.”

478 U.S. at 94-95 (O'Connor, J., concurring).

In this case, the explosive and continuous growth of the Los Angeles County Hispanic community was evident at the time of the adoption of the 1981 redistricting plan as was the steady decline of the County's non-Hispanic white population. These facts, coupled with a long and painful history of discrimination against Hispanics in this County weighs heavily in favor of the conclusion that even relying solely on the 1980 Census data, plaintiffs have met their burden under *Gingles*.

The Court also finds that Hispanics are politically cohesive and that voting behavior is polarized between Hispanics and non-Hispanics. In particular, the Court concludes that Hispanic voters regularly provide overwhelming support for Hispanic candidates while the degree of non-Hispanic cross-over voting is minimal. Given the estimated levels of polarization, including the effects of non-Hispanic bloc voting, an Hispanic candidate is unable to be elected to the Board under the current configuration of supervisorial districts.

During the 1981 redistricting process, the Supervisors' primary objective was to protect their incumbencies and that of their allies. This objective, however, was inescapably linked to the continued fragmentation of the Hispanic population core. The Court believes that had the Board found it possible to protect their

incumbencies while increasing Hispanic voting strength, they would have acted to satisfy both objectives. As defendants' counsel argued in opening statement:

"It was not, . . . the case of a Republican protecting [his] incumbency against the Hispanic Republican. It was the Republican protecting himself or protecting his philosophical concerns and those of the ones who elected him from a change to a Democratic seat. . . . Now looking again to the motive of minority members on the Board of Supervisors. Again what you find is that it was not an effort by the Anglos to preclude Hispanics from getting elected. . . . It was not because of a desire on anyone's part to dilute or diffuse or to keep the Hispanic community powerless; it was because they could not find the way to do what everyone wanted to do. And that sometimes happens in politics."

It is undeniable, however, that the Los Angeles County Board of Supervisors knew that by adopting the 1981 redistricting plan, they were further impairing the ability of Hispanics to gain representation on the Board. The Court finds no legal justification for this form of discrimination based on the protection of supervisorial incumbencies.

As the court stated in *Rybicki v. State Board of Elections*, 574 F. Supp. 1082, 1109 (N.D. Ill. 1982), where the requirements of incumbency "are so closely intertwined with the need for racial dilution . . . an intent to maintain a safe, primarily white, district . . . is virtually coterminous with a purpose to practice racial discrimination." The Court finds, on the evidence presented, that the Supervisors acted with the intent to maintain the fragmentation of the Hispanic vote.

Throughout this trial, the Court heard extensive testimony regarding the size of the supervisorial districts. The Court strongly believes, as one Supervisor testified, that the districts are now too large for any one person to adequately represent. The Court believes that expansion may well be in the best interest of all con-

cerned. However, the Court finds that while the size of the districts contributes significantly to the inability of Hispanics to elect a candidate of their choice, plaintiffs have failed to establish a valid legal claim based solely on the size of the supervisorial districts.

Since the task of reapportionment is properly a legislative function, it is appropriate, in this case, to allow the Board of Supervisors a reasonable opportunity to meet constitutional requirements by adopting a substitute measure. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). It is the sincere hope of this Court that in fashioning a suitable remedy, defendants will carefully reconsider the issue of expansion.

II. FINDINGS OF FACT

A. THE PARTIES

1. The United States of America is the plaintiff in the consolidated case, No. CV 88-5435 KN, *United States of America v. County of Los Angeles, et al.* The United States was represented by Steven H. Rosenbaum, of the Voting Section, Civil Rights Division of the Justice Department.

2. Hispanic¹ registered voters in Los Angeles County are the plaintiffs in this consolidated class action, No. CV 88-5143 KN, *Yolanda Garza, et al. v. County of Los Angeles, et al.* The class representatives include: plaintiff Yolanda Garza, a resident of Supervisorial District One; plaintiff Salvador H. Ledezma, a resident of Supervisorial District Two; plaintiff Raymond Palacios, a resident of Supervisorial District Three; plaintiff Guadalupe De La Garza, a resident of Supervisorial District Four; and plaintiff Monica Tovar, a resident of Supervisorial District Five. All are United States citizens of Spanish heritage and registered voters in Los Angeles County, California (hereinafter the "Garza plain-

¹The term "Hispanic" refers to persons of Spanish heritage and persons of Spanish origin.

tiffs"). Richard P. Fajardo, of the Mexican American Legal Defense and Educational Fund (MALDEF), and Mark D. Rosenbaum of the American Civil Liberties Union (ACLU) represented the Garza plaintiffs.

3. Defendant Los Angeles County is a political subdivision of the State of California established under the laws of the State and the Charter of the County of Los Angeles. Los Angeles County is subject to the requirements of the Voting Rights Act of 1965, as amended, Pub. L. No. 97-205, § 3, 96 Stat. 134 (1982), codified at 42 U.S.C. §§ 1973, *et seq.*

4. Defendants Edmund D. Edelman, Board Chairman; Peter F. Schabarum, Kenneth Hahn, Deane Dana, and Michael D. Antonovich, are duly elected members of the Board of Supervisors of the County. All are white non-Hispanic persons.

5. Defendant Charles Weissburd is the Registrar-Recorder of Los Angeles County responsible for the conduct of elections in the County, including elections for positions on the Board of Supervisors. Mr. Weissburd is a white non-Hispanic person sued in his official capacity.

6. Defendant Richard B. Dixon is the administrative officer of Los Angeles County and has primary responsibility for the conduct of day-to-day County affairs including oversight and implementation of County and State election laws. Mr. Dixon is a white non-Hispanic person sued in his official capacity.

7. Defendant Frank F. Zolin, named as a defendant by the Garza plaintiffs, is the Clerk/Executive Officer for the County responsible for conducting County elections.

8. Defendants were represented by John McDermott, Lee Blackman, and Richard Simon, of McDermott, Will & Emery.

B. THE CLAIMS

9. Both the United States and the Garza plaintiffs challenge the 1981 redistricting plan (hereinafter "the 1981 Plan") under the authority of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 (hereinafter "the Act").

10. The Garza plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23(b)(2) on their own behalf and on behalf of all Hispanic citizens whose right to vote has been or will be abridged by the adoption and maintenance of the 1981 Plan.

11. The Garza plaintiffs also challenge the 1981 Plan on the grounds that it was adopted and/or maintained for the purpose of discriminating against Hispanic citizens in violation of Section 2 of the Act and the Fourteenth and Fifteenth Amendments to the United States Constitution.

12. The Garza plaintiffs allege that the presence of only five supervisorial districts results in the dilution of Hispanic voting rights in violation of Section 2 of the Act and the Fourteenth and Fifteenth Amendments.

C. FACTUAL BACKGROUND

1. History of the Governing Body

13. Los Angeles County was one of the original 27 counties formed in 1850 by the California Legislature.

14. The first Board of Supervisors was elected in 1852.

15. Los Angeles County has been governed by a five-member Board of Supervisors at all times except for a two-year period between 1883 and 1885, when the Board consisted of seven members.

16. Under the provisions of a charter adopted in 1912, Los Angeles County was granted home rule power and was divided into five supervisorial districts. The charter became effective in 1913.

17. Since at least 1914, the Supervisors have been elected during even-numbered years in nonpartisan elections. If no candidate receives a majority of the votes cast in a June primary, the two candidates who receive the highest number of votes oppose each other in a general election in November of that year.

18. Supervisors are elected for four-year, staggered terms.

19. Elections for Supervisor in Districts 2, 4 and 5 were held in 1988. Elections for Supervisor in Districts 1 and 3 are scheduled to be conducted in 1990.

20. The Los Angeles County Board of Supervisors has legislative, executive and quasi-judicial powers.

21. The Board of Supervisors has authority pursuant to state law to alter, with voter approval, the size of the governing body.

22. Pursuant to the charter of the County of Los Angeles, the Board of Supervisors has authority, within one year after a general election, to redraw the boundaries of the supervisorial districts. Charter of the County of Los Angeles, Art. II, Sec. 7 (1985).

23. Los Angeles County is responsible for providing certain classes of governmental services to all County residents including health services, courts, elections and welfare.

24. Los Angeles County is also responsible for providing full municipal services to residents of the unincorporated areas of the County, including fire protection, law enforcement, planning, zoning and building inspection.

25. Supervisor Edelman agreed with the finding in "To Serve Seven Million," a 1976 report of the Public Commission on Los Angeles County Government, that "[n]o other local official in the United States is assigned responsibilities of the breadth and scale of those afforded a Los Angeles County Supervisor."

26. Los Angeles County has a contracting program to provide certain services to cities requesting these services. As a result of the contracting program, the County provides a significant portion of local governmental service to all County residents.

27. The Board of Supervisors has the authority to adopt the County's budget, appropriate funds pursuant to the budget and conduct elections in the County.

28. Los Angeles County had a budget of \$9,111,147,132 for the fiscal year ending June 30, 1989.

2. Demographics of Los Angeles County

29. The demographic picture of Los Angeles County has changed dramatically since 1950.

30. The 1950 Census of Population, (hereinafter "Census"), reported that the total population of Los Angeles County was 4,015,687, of whom 287,614 (7.2%) were persons with Spanish surnames.

31. The 1960 Census reported that the total population of Los Angeles County was 6,038,771, of whom 576,716 (9.6%) were persons with Spanish surnames.

32. The total population of Los Angeles County increased by 2,023,084 persons (50.4%) between 1950 and 1960 while the County's Spanish-surnamed population increased by 289,102 persons (100.5%) between 1950 and 1960.

33. The 1960 Census data revealed a population concentration of Spanish surnamed persons in the area south and east of downtown Los Angeles.

34. The 1970 Census reported that the total population of Los Angeles County was 7,032,075 persons, of whom 1,289,311 (18.3%) were persons with Spanish surnames.

35. The total population of Los Angeles County increased by 993,304 persons (16.4%) between 1960 and 1970, while the County's Spanish-surnamed population increased by 712,595 persons (60.24%).

36. The 1970 Census revealed several discrete concentrations of Spanish surnamed persons in the center of the County.

37. The 1980 Census reported that the total population of the County of Los Angeles was 7,477,503 persons, of whom 2,066,103 (27.6%) were persons of Spanish origin, 926,361 (12.4%) were black persons and 434,850 (5.8%) were Asians and Pacific Islanders.

38. The total population of Los Angeles County increased by 445,428 persons (6.3%) between 1970 and 1980 while the number of persons of Spanish origin in the County increased by 776,792 persons (60.2%).

39. According to the 1980 Census, the population of Los Angeles County can be summarized as follows:

<i>Los Angeles County—1980 Census²</i>						
	<u>Total</u>	<u>Hispanic</u>	<u>White</u>	<u>Black</u>	<u>Asian</u>	<u>Others</u>
POP	7,477,503	27.6%	52.9%	12.4%	5.8%	1.3%
VAP	5,446,115	23.3%	58.3%	11.4%	5.8%	1.2%
CVAP	4,515,239	14.6%	67.4%	13.5%	3.7%	0.8%

40. The data from the previous three decennial censuses demonstrate that as Los Angeles County's total population has grown over the past few decades, the County's racial and ethnic composition has also changed. The group that has grown the fastest in recent years is comprised of persons of Spanish origin, as reported by the Census in 1980.

²POP refers to the 1980 Census total population. VAP refers to the 1980 Census voting age population. CVAP refers to the 1980 Census citizen voting age population.

41. The number of persons reported as having Spanish surnames in the 1970 Census of Los Angeles County was 1,051,409.

42. By the time of the 1980 Census, more than 2 million people in Los Angeles County reported that they were of Spanish origin.

43. The County's Hispanic population is concentrated, to a significant extent, in a compact and contiguous area beginning in the eastern part of the City of Los Angeles and extending eastward into the San Gabriel Valley. (hereinafter "Hispanic Core")

44. This Hispanic Core includes Boyle Heights, Lincoln Heights and El Sereno in the City of Los Angeles, the unincorporated East Los Angeles community, and the cities of Rosemead, Pico Rivera, Montebello, La Puente, El Monte, Maywood, Vernon, Bell, Bell Gardens and other cities and unincorporated communities.

45. The Hispanic Core is contained within a set of 229 census tracts. These tracts are contiguous and persons of Spanish origin were the majority of the population in all but three of the tracts according to the full-count data from the 1980 Census.

46. According to the 1980 Census, the Hispanic Core had a total population of 1,204,279, of whom 877,478 (72.8%) were Hispanic and a voting age population that was 67.4 percent Hispanic.

47. Approximately 40 percent of the County's entire Hispanic population lived in one of the 229 core census tracts in 1980, and these tracts comprise 81 percent of all census tracts with Hispanic population majorities in 1980.

48. Data from the Los Angeles County Department of Health Services and Data Processing have been presented to the Court in the form of a series of small-area population estimates and projections known as the Population Estimates and Projections System (hereinafter "PEPS").

49. PEPS data contains estimates of 1985 and 1987 total population and population by race and ethnicity by various age levels for each populated census tract in Los Angeles County.

50. PEPS also generated projections of 1989 and 1990 total population and population by race and ethnicity by various age levels for each populated census tract in the County.

51. The County's population as a whole grew by 12.3 percent between 1980 and 1987. The County's Hispanic population grew by 42.7 percent between 1980 and 1987. By 1990, Hispanics are expected to constitute 35.8 percent of the total population of the County.

52. According to PEPS data, the number of non-Hispanic whites fell by 378,000 between 1980 and 1987. In 1980, non-Hispanic whites made up 53.2 percent of the County's total population. By 1987, non-Hispanics made up only 42.8 percent of the County's total population.

53. In 1990, non-Hispanic whites are projected to constitute 39.8 percent of the population.

54. In the Hispanic Core, the total population was estimated by PEPS to have grown from 1,204,279 persons to 1,519,630 persons between 1980 and 1987.

3. Campaign Financing

55. Since 1960, only three incumbents running for a seat on the Board of Supervisors were defeated in their reelection bids. Supervisor Hahn has served since 1952; Supervisor Schabarum since 1972; Supervisor Edelman since 1974; and Supervisors Dana and Antonovich since 1980.

56. Incumbent Supervisors enjoy a strong campaign fund-raising advantage over their challengers for reelection.

57. In 1987, the combined campaign funds of the five incumbent Supervisors totaled \$3 million. Forty-nine percent of this amount belonged to Supervisors Schabarum and Edelman, who would not run for reelection until 1990. The largest amount, \$800,000 belonged to Supervisor Dana, the smallest, \$210,000, to Supervisor Hahn.

58. Incumbent Supervisors received 91 percent, \$8.2 million of \$9.1 million, of all campaign money raised from 1981 to 1986 and raised 74 percent of their contribution in non-election years.

59. During the 1982, 1984, 1986, and 1988 elections, each incumbent Supervisor had more campaign funds expended on his behalf that were expended on behalf of his combined opposition.

60. Potential candidates recognize that to be considered a serious candidate for the Board, a person must spend between one and two million dollars on a campaign.

61. Mr. George Pla, who has managed political campaigns for elections in Los Angeles County, testified that it would be difficult for any candidate to raise \$1-2 million, but that it would be even more difficult for an Hispanic candidate because of lack of a financial base. Pla also noted the adverse effect the inability to raise funds had on public perception of an Hispanic candidate's likelihood of success.

4. Prior Redistrictings

62. The 1981 Plan cannot be analyzed in a vacuum. As illustrated by the testimony of J. Morgan Kousser, a professor of History at the California Institute of Technology, if the Court examines the changes in District 3 in the context of the demographic changes in the County as a whole, as well as the place where Hispanics lived and moved to during that period of time, the pattern is persuasive evidence that the lines were drawn and maintained with a racially discriminatory design.

63. Dr. Kousser, in particular, concluded that there was ample evidence to be gleaned from the history of prior redistrictings to indicate that the Board kept the Hispanic Core split in order to secure their positions against challengers who would appeal to Hispanic voters.

(a) *The 1959 Redistricting*

64. Prior to 1959, District 3 included Western Rosemead and did not include any portion of the San Fernando Valley, Beverly Hills, West Hollywood, West Los Angeles, or Eagle Rock.

65. The 1959 redistricting occurred less than six months after the November 1958 general election for the open position of District 3 Supervisor. Ernest Debs, a non-Hispanic, defeated Hispanic candidate Edward Roybal, by a margin of 52.2 percent to 47.8 percent.

66. Debs received 141,011 votes. Roybal received 128,974 votes. There were four recounts before Debs was finally determined to be the winner.

67. In 1959, Debs reported in a Supervisorial hearing that he and District 4 Supervisor Burton Chace agreed to shift Beverly Hills, West Hollywood, and West Los Angeles from District 4 to District 3.

68. The Board's action transferred between 50,000 to 100,000 voters from District 4 into District 3 and had the effect of substantially decreasing the proportion of Hispanic voters in District 3.

69. Dr. Kousser testified it was his opinion that Debs and Chace agreed to the transfer for two reasons. First, Chace was receptive to the agreement because it enabled him to eliminate Los Angeles City Councilwoman Rosalind Wyman as a possible opponent in his upcoming 1960 bid for reelection. Debs welcomed the change because the move west allowed him to make District 3 more easily winnable against Roybal or another candidate who might appeal to Hispanic voters in the next election.

70. Debs was a Democrat and Chace a Republican. The two were not allies on other issues.

71. At the time of this transfer, District 1, which borders on the east of District 3, was much larger than the other four districts.

72. If Debs had taken communities from District 1, the five districts would have been equipopulous. The lack of effective equal population requirements at the time made it possible for the District 3 to be moved deliberately west instead of east which avoided adding communities from the Roybal stronghold in East Los Angeles.

(b) The 1963 Redistricting

73. On December 19, 1961, the Board of Supervisors, acting in accordance with Section 25009 of the California Government Code enacted in 1961, adopted an order establishing the Supervisorial District Boundary Committee (hereinafter "Boundary Committee"), to study and make recommendations concerning the need for changing Supervisorial district boundaries in Los Angeles County. Each Supervisor appointed one member to the committee.

74. In 1962, voters defeated a referendum to expand the Board of Supervisors from five to seven members.

75. Evidence suggests Debs wanted the referendum issue on the ballot in 1962 because he sought to move his district out of East Los Angeles and concentrate his district in the western area of the district, Beverly Hills, West Los Angeles and West Hollywood, communities with larger proportions of Non-Hispanic whites.

76. The Board of Supervisors adopted ordinance 8407 on May 14, 1963 which enacted the recommendations of the Boundary Committee and established new district boundaries.

77. The boundary changes involved a shift in the boundary between Districts 3 and 5, in which District 3 was extended north across the Santa Monica Mountains, for the first time, to the Ventura Freeway and into the San Fernando Valley. Eagle Rock was also added to District 3.

78. At the time of the 1963 boundary changes, a growing Hispanic population was beginning to emerge in the San Gabriel Valley, directly adjacent to the eastern boundary of District 3. Eagle Rock, in contrast, was about 4 percent Spanish surname and the portion of the San Fernando Valley annexed to District 2 was about 1 percent Spanish surname.

79. Since District 3 was underpopulated in 1963 and District 1 was overpopulated, population equality among the supervisorial districts could have been fostered by moving District 1's growing Hispanic areas in the San Gabriel Valley directly to District 3. This was not done.

(c) *The 1965 Redistricting*

80. In 1965, the California Supreme Court ruled that no supervisorial district in California should have more than 23 percent or less than 17 percent of a County's total population. *Miller v. Board of Supervisors of Santa Clara County*, 63 Cal. 2d 343 (1965).

81. In response to *Miller*, the Los Angeles County Board of Supervisors reactivated the Supervisorial District Boundary Committee on October 5, 1965.

82. The 1965 Boundary Committee considered a proposal by Russell Quisenberry, the appointee of District 5 Supervisor Warren Dorn, to move 90,000 people in Alhambra and San Gabriel, areas close to the Hispanic Core, from District 1 to Debs' District 3. Dorn proposed that these changes be implemented after the 1966 election, when Debs faced reelection.

83. The Boundary Committee did not follow the Dorn proposal. Instead, Alhambra and San Gabriel were assigned to Dorn's Fifth District and 87,000 predominantly Anglo residents of San Fernando Valley were moved to Debs' District 3 from Dorn's District 5.

84. The Boundary Committee reported that, based on estimates of population, the Supervisorial Districts if revised according to the committee's recommendations, would have the following populations:

District 1	1,492,000
District 2	1,258,000
District 3	1,398,000
District 4	1,253,000
District 5	1,484,000

85. The Boundary Committee plan provided for an average deviation from population equality of 7.06 percent and a maximum deviation of 17.35 percent.

86. On November 30, 1965, the Board of Supervisors, by a 4-1 vote with Supervisor Hahn dissenting, adopted Ordinance 8998, which enacted the plan proposed by the 1965 Boundary Committee.

87. The adoption of the 1965 plan involved such changes as: (1) The inclusion of the City of Long Beach, which previously was split between two districts, wholly in District 4; (2) The boundary between District 3 and District 5 was shifted from the Ventura Freeway to Oxnard Boulevard; (3) Monterey Park and unincorporated South San Gabriel were transferred from District 1 to District 3; and (4) District 5, as previously discussed, was allocated a portion of the eastern part of the County in the San Gabriel Valley which previously had been represented by Supervisor Bonelli from District 1.

88. The Boundary Committee rejected a proposal to move Alhambra and San Gabriel, areas adjacent to growing Hispanic population, from District 1 to District 3. Instead, the committee recommended a complicated two-stage change which moved Alhambra and San Gabriel from Supervisor Bonelli's District 1 to Supervisor Dorn's District 5, moved a section of the San Fernando Valley from District 5 to Supervisor Debs' District 3, and moved Monterey Park and unincorporated South San Gabriel from District 1 to District 3.

89. Dr. Kousser testified that, in his opinion, the Board avoided transferring Alhambra and San Gabriel directly to District 3 because those areas were adjacent to areas of Hispanic population concentration and were becoming more Hispanic. The more complicated two-stage adjustments permitted the addition of heavily Anglo areas from the San Fernando Valley and offset the much more limited addition of Hispanic population gained by moving Monterey Park and the unincorporated area of South San Gabriel to District 3.

90. None of the persons who served on the 1965 Boundary Committee were individuals with Spanish surnames.

(d) The 1971 Redistricting

91. A comparison of the 1960 Census data with 1970 Census data demonstrates the extent to which areas bordering on District 3 were gaining Hispanic population. Spanish surname population increased during that decade in Alhambra from 6 percent to 19 percent and in Monterey Park from 13 percent to 33 percent.

92. The Hispanic population in the County doubled from 1970 to 1980 and, in 1970, the Hispanic Core showed marked and continuous expansion outward and contiguously into the San Gabriel Valley.

93. Efforts were made during this time to expand the Board of Supervisors. Esteban Torres, who was president of the Congress

of Mexican American Unity, testified before the Los Angeles County Economy and Efficiency Committee in April 1970, to urge that the Committee recommend expansion of the Board.

94. Concurrent efforts were also made to expand the Los Angeles City Council.

95. The Board failed to obtain the three votes necessary to place the issue on the ballot. The City Council expansion effort failed to pass at the polls.

96. The Board of Supervisors established the Los Angeles County Supervisorial District Boundary Committee on April 20, 1970 (hereinafter "Boundary Committee").

97. The members of the committee and the Supervisors who appointed them were as follows: John D. Lusk by Supervisor Bonelli; Dan Patacchia by Supervisor Hahn; Leslie G. Cramer by Supervisor Debs; LeRoy Center by Supervisor Chace; and Alfred E. Paonessa by Supervisor Dorn.

98. None of the individuals who served on the 1963, 1965 and 1971 Boundary Committees had a Spanish surname.

99. Richard Schoeni, a County employee, served as the secretary to the 1971 Boundary Committee. In this capacity, Mr. Schoeni provided staff support, gathered information, made suggestions, maintained the committee's records, and drafted the report and recommendations that the Committee submitted to the Board of Supervisors.

100. Pursuant to Section 25001 of the California Government Code, the Board, in redistricting, may consider such factors as: topography, geography, cohesiveness, contiguity, integrity, compactness of territory, and community of interests of the districts.

101. The Boundary Committee adopted the following guidelines in addition to the factors delineated in the California Gov-

ernment Code: (1) to preserve historical representation of certain areas closely identified with a particular district; (2) to avoid the division of cities by supervisorial boundaries whenever possible; and (3) to avoid the separation of cities or communities sharing common interests and problems peculiar to a section of the County.

102. Population statistics generated from the 1970 Census demonstrated that the 1965 supervisorial districts had the following populations:

<u>District</u>	<u>Population</u>	<u>Percentage of Total</u>
1	1,547,407	22.0
2	1,238,454	17.6
3	1,364,312	19.4
4	1,271,186	18.1
5	1,610,716	22.9

103. Among the proposals discussed during the meetings of the Boundary Committee was one presented by Leslie Cramer, representative of Ernest Debs, to extend District 3 further into the San Fernando Valley north of Oxnard Boulevard.

104. The 1971 Boundary Committee never gave any consideration to moving District 3 east to include more of the San Gabriel Valley or moving Pico Rivera from District 1, which was overpopulated, to District 3. Nor did the committee consider adding such areas as San Gabriel, Rosemead or El Monte to District 3.

105. According to the testimony of Dr. Schoeni, moving District 3 east was not considered to avoid splitting the San Gabriel Valley. However, San Gabriel Valley was already split among District 5 which contains Alhambra, San Gabriel, and East San Gabriel, and District 3 which contains South San Gabriel and part of Rosemead.

106. The Los Angeles County Supervisorial District Boundary Committee Report and Recommendations, which included a detailed description of the supervisorial boundaries prepared by the

County Engineer, was submitted to the Board of Supervisors on July 22, 1971. The Board adopted the plan proposed by the Boundary Committee.

107. The Boundary Committee recommended the following changes to the existing plan: (1) Artesia, Bellflower, Cerritos and Lakewood were transferred from District 1 to District 4; (2) Rosemead was transferred from District 3 to District 1; and (3) Van Nuys, Sepulveda, Panorama City and Sun Valley were transferred to District 3 from District 5.

108. As a result of the 1971 redistricting, District 3 gained over 205,000 people from other districts and lost more than 163,000 people to other districts.

109. In 1971, District 3 lost some areas with substantial Hispanic population on its eastern border. Western Rosemead was transferred from District 3 to District 1. A census tract in the City of San Gabriel was also transferred from District 3 to District 5.

110. George Marr, head of the Population Research Section of the Department of Regional Planning testified that he was surprised by the proposal to move a substantial portion of the San Fernando Valley from District 5 to District 3. Marr described the portion of the San Fernando Valley ultimately added to District 3 from District 5 as looking like "one of those Easter Island heads." Marr developed the general feeling that Debs' representative on the Boundary Committee had requested the additional area in the San Fernando Valley because the residents of the area were regarded as "our kind of people."

111. None of the persons who served on the 1971 Boundary Commission were individuals with Spanish surnames.

(1) Intent of Past Redistrictings

112. The Court finds that the Board has redrawn the supervisory boundaries over the period 1959-1971, at least in part, to

avoid enhancing Hispanic voting strength in District 3, the district that has historically had the highest proportion of Hispanics and to make it less likely that a viable, well-financed Hispanic opponent would seek office in that district. This finding is based on both direct and circumstantial evidence, including the finding that, since the defeat of Edward Roybal in 1959, no well-financed Hispanic or Spanish-surname candidate has run for election in District 3.

113. While Hispanic population was added to District 3 during the 1959-1971 redistrictings, the Court finds that the proportion of Spanish-surname persons added to District 3 has been lower than the Hispanic population proportion in the County as a whole. No individual area added was greater than 15.1 percent Spanish-surname.

114. Dating from the adoption of the County's Charter in 1912 through the 1971 redistricting process, no Los Angeles County redistricting plan has created a supervisorial district in which Hispanic persons constituted a majority or a plurality of the total population.

(e) 1972 *Los Angeles City Council Redistricting*

115. In 1971, the California Supreme Court ruled that the 1968 voter-based reapportionment plan for the Los Angeles City Council was unconstitutional. *Calderon v. City of Los Angeles*, 4 Cal. 3d 251, 266 (1971).

116. In 1972, the Charter and Code Committee set out to devise a new redistricting plan.

117. As then Committee Chair Edmund Edelman stated in a 1971 press release: "It is my intention to urge my colleagues on the committee and on the council to create a district where it would be possible for a Mexican-American to be elected."

118. Edelman proposed a plan which increased the Spanish-surname proportion in District 14, held by Councilman Art Snyder, from approximately 40 percent to 68 percent Hispanic by unifying Hispanic communities previously split by Districts 13 and 14.

119. Citizenship and voting age data were not used for purposes of devising the city's 1972 redistricting plan.

120. In devising the 1972 plan, Edelman was assisted by Alma Fitch and Jeff Seymour, both of whom played a role in the 1981 supervisorial redistricting.

121. Chicanos for Fair Representation criticized Edelman's plan and questioned the accuracy of the 68 percent estimate of Spanish-surname population, believing it to be 57 percent.

122. The City Council adopted the Edelman Plan and overrode the veto of Mayor Sam Ycerty.

123. Despite the substantial increase in the Hispanic population in District 14, Councilman Snyder was able to defeat several Hispanic opponents.

124. In 1985, after Snyder's retirement, Richard Alatorre was elected to represent District 14 and became the first Hispanic to serve on the Los Angeles City Council since Edward Roybal.

(f) The 1981 Redistricting

125. The individuals involved in the 1981 redistricting had demographic information available of population changes and trends in Los Angeles County from 1950 to 1980. It was readily apparent in 1980 that the Hispanic population was on the rise and growing rapidly and that the white non-Hispanic population was declining.

126. According to the report of the 1981 Boundary Advisory Committee, the 1980 Census data showed that the districts under the 1971 boundaries had the following population characteristics:

<u>District</u>	<u>Population</u>	<u>%</u>	<u>Black</u>	<u>%</u>	<u>Hispanic</u>	<u>%</u>
1	1,522,347	20.4	47,772	3.1	550,819	36.2
2	1,423,015	19.0	635,751	44.7	354,314	24.9
3	1,577,877	21.1	44,868	2.8	669,246	42.4
4	1,445,286	19.3	140,585	9.7	236,518	16.4
5	1,509,132	20.2	75,003	5.0	254,830	16.9

127. From a political perspective, since Hispanic population growth was most significant in Districts 1 and 3, if the 1971 boundaries were changed in any measurable way to eliminate the existing fragmentation, the incumbency of either Supervisor Schabarum or Supervisor Edelman would be most affected by a potential Hispanic candidate.

128. All of the plans considered by the participants in the redistricting were based on 1980 Census population data.

129. In 1981, citizenship or voting age data was not considered or requested by County staff, Boundary Committee members or the Supervisors and their aides.

130. No suggestion was made in 1981 that citizenship data or voter registration data be used as the apportionment base.

131. On February 27, 1981, Deane Dana sent a lettergram to Supervisors Schabarum and Antonovich recommending that both a public and a private redistricting committee be established. Dana suggested obtaining the services of Joseph Shumate to assist in the redistricting effort noting the experience Shumate had with the Republican reapportionment efforts in 1970, 1971 and 1972.

132. Mr. Shumate was hired to work in a private capacity on behalf of Supervisors Dana, Schabarum and Antonovich. The objective, according to Mr. Shumate's testimony, was "to assist in determining whether a plan would help or hurt the three Supervisors."

133. Allan Hoffenblum, a political advisor to Supervisor Antonovich, testified that the following statement attributed to him was what he believed at the time:

"We would be remiss is [sic] we did not have a [sic] least one district that was at least 50 percent Hispanic, otherwise it looks like we're sitting here trying to save five white Supervisors."

134. Supervisor Edelman and others involved in the 1981 re-districting effort were not aware of Mr. Shumate or the role he played on behalf of Supervisors Schabarum, Antonovich and Dana.

135. While these three Supervisors were pursuing their redistricting efforts, Supervisor Edelman asked Jeffrey Seymour to assist him in the redistricting process by examining maps produced and by preparing a political analysis of Supervisor Edelman's district.

136. An analysis of the 1978 Supervisor election in District 3 was conducted after the Boundary Committee recommended a plan with a Hispanic population majority in District 3. The actual results of the analysis were never produced. Mr. Seymour did not rule out the possibility that he requested such an analysis and Supervisor Edelman testified that he "most probably" discussed the results of the 1978 election analysis with Mr. Seymour.

137. Peter Bonardi, a programmer with the Urban Research Section of the Data Processing Department in 1981 and a participant in the data analysis requested by Supervisor Edelman, stated that he was directed not to talk about the analysis of voting patterns and that an "atmosphere of 'keep it quiet' " pervaded.

138. Supervisors Hahn and Edelman sought to maintain the existing lines. To this end, the Democratic minority agreed to a transfer of population from District 3 to District 2. Supervisor

Edelman acknowledged that he and Supervisor Hahn had worked out a transfer of population from the heavily Hispanic Pico-Union area on the southern border of District 3 to the northern end of District 2.

139. Supervisor Edelman knew that if the 1971 boundary lines were kept intact, the Hispanic community was going to remain essentially the same in terms of its division among the districts.

140. The Board departed from its past redistricting practice in 1981 and approved a contract with The Rose Institute for State and Local Government, a private entity, to perform specialized services and produce redistricting data at a cost of \$30,000.

141. The facilities at The Rose Institute were used primarily by persons working privately on behalf of Supervisor Dana, Schabarum, and Antonovich, including Joseph Shumate, conducting private redistricting research and analysis.

142. The Board reactivated the Supervisorial District Boundary Committee and charged the Committee with the responsibility for recommending a redistricting plan in accordance with the provisions of Section 35000-35006 of the Elections Code and one which would ensure that ethnic minorities are equitably represented, and that city boundaries were respected as much as possible.

143. The five initial appointees to the Boundary Committee, Blake Sanborn, Robert Bush, Ron Smith, Alma Fitch, and Allan Hoffenblum, were persons who had close political ties to the appointing Supervisors or were persons who had been trusted employees and advisors to the Supervisors. All five individuals were non-Hispanic.

144. On July 8, 1981, representatives of Californios for Fair Representation (hereinafter "Californios" or "CFR"), a coalition of Hispanic organizations active in the redistricting process, crit-

icized the all-Anglo composition of the Committee and requested that it be expanded to include minority representatives, including at least one Hispanic and one black.

145. On July 14, 1981, the Board of Supervisors appointed five additional members to the Boundary Committee, Lauro Neri and Jesus Melendez, both Hispanic; Davis Lear and Robert Perkins, both black; and Dr. Frederico Quevedo, a Filipino. These additional appointees played a minor role in the redistricting process. None of the minority representatives or persons appointed to the Boundary Committee on July 14, 1981 had any previous experience in demography or the redistricting of elective bodies.

146. The Los Angeles County Coalition of CFR worked on redistricting plans for state, county and local jurisdictions within Los Angeles County and was permitted to use the facilities of the Rose Institute for the purpose of preparing their proposals.

147. Leticia Quezada was the chair of the Los Angeles County CFR chapter.

148. In considering different redistricting strategies, CFR declined to create a plan which included one district with a substantial Hispanic majority because they did not think that four Supervisors would vote for such a plan. CFR viewed a plan which included an Hispanic district as very threatening to incumbents since it would involve drastic shifts in population.

149. CFR instead opted to propose a plan that reduced the splintering of the Hispanic community and provided for two Hispanic "influence" districts: one with a bare Hispanic population majority in District 3 and an Hispanic growth district in District 1 with 42 percent Hispanic population.

150. Through various conversations with the Supervisors or their representatives, members of CFR developed an understand-

ing of the objectives of the Supervisors for the redistricting process. Supervisor Edelman indicated that he wanted the San Diego Freeway to be the western boundary of District 3 and the Santa Monica Freeway to be the district's southern boundary. Alma Fitch informed CFR that Supervisor Edelman was happy to represent the Hispanic community but that he did not believe that all the Hispanics should be in his district. Mike Lewis indicated in meetings with CFR that Supervisor Schabarum was willing to transfer Hispanic population from District 1 to District 3 to create an Hispanic district. Specifically, the Supervisor was willing to lose Pico Rivera and South Gate, two majority Hispanic cities.

151. Boundary Committee members Hoffenblum and Smith each introduced plans with identical 50.2 percent Hispanic populations in Supervisorial District 3. The plans differed with respect to District 1. While the Californios plan increased the District 1 Hispanic population from 32 percent Hispanic to 42 percent, both the Hoffenblum and Smith plans reduce the Hispanic population in District 1 to 31.3 percent and 31.7 percent Hispanic respectively.

152. By a 5-4 vote, the Committee recommended that the Board adopt the Hoffenblum Plan. The Final Report of the Boundary Committee stated as to the Hoffenblum Plan:

This Plan increases the opportunity of Hispanics and Blacks by recognizing that a special community of interests exists for Hispanics and Blacks. Boundaries were developed to increase the electoral effectiveness of these two groups in the Second and Third Supervisorial districts.

153. Representatives of Supervisors Hahn and Edelman offered no proposals for plans during the course of the Committee's meetings, and opposed all plans enlarging the Hispanic population in District 3 beyond the then-current district lines.

154. Besides increasing the Hispanic population in District 3, the Hoffenblum Plan reduced the Hispanic population in the dis-

tricts of Supervisors Dana, Schabarum and Antonovich, particularly in Schabarum's Supervisorial District 1, and the black populations in the districts of Dana and Antonovich. Black and Hispanic populations were added to Districts 3 and 2. The following tables show the changes in population statistics as illustrated by the Hoffenblum Plan from the then-existing boundaries.

Current (1981) Boundaries—Pre-Redistricting

<u>Dist</u>	<u>Population</u>	<u>%</u>	<u>Black</u>	<u>%</u>	<u>Hispanic</u>	<u>%</u>
1	1,522,347	20.4	47,772	3.1	550,819	36.2
2	1,423,015	19.0	635,751	44.7	354,314	24.9
3	1,577,877	21.1	44,868	2.8	669,246	42.4
4	1,445,286	19.3	140,585	9.7	236,518	16.4
5	1,509,132	20.2	75,033	5.0	254,830	16.9

Hoffenblum Plan

<u>Dist</u>	<u>Population</u>	<u>%</u>	<u>Black</u>	<u>%</u>	<u>Hispanic</u>	<u>%</u>
1	1,496,560	20.0	48,708	3.3	468,661	31.3
2	1,495,727	20.0	691,655	46.2	384,721	25.7
3	1,495,085	20.0	50,363	3.4	750,266	50.2
4	1,495,738	20.0	81,082	5.4	231,268	15.5
5	1,495,547	20.0	71,701	4.8	230,811	15.4

155. The Smith and Hoffenblum plans, while increasing District 3 to a bare majority, proposed a substantial decrease in the Hispanic population percentage in District 1.

156. The CFR plan, the Smith plan and the Hoffenblum plan all proposed shifting the City of Compton from District 4, the "coastal district," to District 2, where most of the County's black population was concentrated.

157. Smith and Hoffenblum opposed the CFR plan because the plan proposed increasing the Hispanic proportion in District 1 from 36 to 42 percent. Both Boundary Committee members perceived the CFR effort as intended to jeopardize the status of Supervisor Schabarum as well as that of the conservative majority.

158. Hoffenblum testified that one of the objectives of the Republican majority was to create an Hispanic seat without altering the ideological makeup of the Board. According to Hoffenblum, it was "self-evident" that if an Hispanic district was created in Supervisor Schabarum's district it would impact on the Republican majority.

159. The proponents of the Smith and Hoffenblum plans sought to gain areas of Republican strength such as La Mirada, Arcadia, Bradbury in Districts 4 and 5, while losing increasing Hispanic areas such as Alhambra and the predominantly black Compton and other liberal areas of Santa Monica and Venice.

160. The Boundary Committee met officially on eight occasions between July 8 and August 12, 1981.

161. No Board member ever publicly advocated any of the plans introduced by members of the Boundary Commission, including the recommended Hoffenblum Plan or the CFR Plan.

162. Supervisor Edelman would not rule out the possibility that ethnic considerations played at least some part in the rejection by the Board majority of the CFR Plan. Moreover, the fact that CFR proposed a plan in which District 1 had a 42 percent Hispanic population was a possible basis for the rejection of the plan by the majority. Supervisor Schabarum would not accept a 45 or 50 percent Hispanic proportion in his district in 1981.

163. The Supervisors proposed no plans raising Hispanic population in any district beyond where it already remained by virtue of the 1971 boundary lines. Although the feasibility of establishing even a 50 percent Hispanic district was never disputed, no Supervisor ever publicly discussed or endorsed the idea.

164. The Court finds that in 1981 a district could have been devised which more fairly and adequately recognized Hispanic voting strength while complying with the standard redistricting criteria.

165. On September 24, 1981, prior to the Board's adoption of the challenged plan, Board members met, two at a time in a series of private meetings in the anteroom adjacent to the board room, where they tried to reach agreement on a plan.

166. On at least ten separate occasions, pairs of Supervisors entered the room and negotiated the final redistricting plan.

167. The Board rejected the Boundary Committee's report.

168. According to the deposition of Mr. Schoeni:

"The Boundary Committee report was received; the Board heard testimony; the Board set aside the Boundary Committee report and proceeded from a clean slate, if you will, with Supervisor Edelman mediating and trying to gain as much in terms of population equity as was possible."

169. Using the map which was in the anteroom, Supervisor Schabarum and Antonovich discussed changes in the boundary between Districts 1 and 5, including the transfer of Sierra Madre. Schabarum and Antonovich did not discuss the Hoffenblum, Smith or CFR plans.

170. Mr. Schoeni drew proposed district boundaries on the map in the anteroom, and once a map was developed which purported to reflect a consensus of the Board, an immediate tabulation of the changes was performed and given to Board Chair, Supervisor Edelman.

171. On September 24, 1981, after Board members had reached an agreement on a plan, the Board met publicly and unanimously adopted this recent creation which had never been presented to the public.

172. Supervisor Schabarum testified that he had described the 1981 plan as "ho-hum" because it "just juggled the boundaries around a little bit to get the job done within the law."

173. Supervisor Schabarum also testified that he thinks it "fundamentally un-American and unsound" to fashion district lines with the intent of permitting ethnic groups to be represented.

174. The Court finds that the Supervisors and their aids understood the potential for increasing Hispanic voting strength and sought to avoid the consequences of a redistricting plan designed to eliminate the fragmentation of the Hispanic population.

(1) Intent of 1981 Redistricting

175. The plan adopted in 1981 retained the boundary between the First and the Third Supervisorial Districts, the districts that contain the largest proportions of Hispanics. In doing so, the 1981 Plan continued to split the Hispanic Core almost in half.

176. The Board appeared to ignore the three proposed plans which provided for a bare Hispanic population majority.

177. The Court finds that the Board of Supervisors, in adopting the 1981 redistricting plan, acted primarily with the objective of protecting and preserving the incumbencies of the five Supervisors or their political allies.

178. The Court finds that in 1981 the five members of the Board of Supervisors were aware that the plans which they eventually adopted would continue to fragment the Hispanic population and further impair the ability of Hispanics to gain representation on the Board.

179. The continued fragmentation of the Hispanic vote was a reasonably foreseeable consequence of the adoption of the 1981 Plan.

180. The Court finds that during the 1981 redistricting process, the Supervisors knew that the protection of their five Anglo incumbencies was inextricably linked to the continued fragmentation of the Hispanic Core.

181. The Supervisors appear to have acted primarily on the political instinct of self-preservation. The Court finds, however, that the Supervisors also intended what they knew to be the likely result of their actions and a prerequisite to self-preservation—the continued fragmentation of the Hispanic Core and the dilution of Hispanic voting strength.

D. SIZE AND GEOGRAPHIC COMPACTNESS OF HISPANIC COMMUNITY

1. 1980 Census Data

182. As stated *supra*, in Part C, 2, the 1980 Census reported that the total population of the County of Los Angeles was 7,477,503 persons of whom 2,066,103 or 27.6 percent were persons of Spanish origin.

183. According to full-count data from the 1980 Census, persons of Spanish origin were the majority of the population in all but three of the 229 contiguous census tracts comprising the Hispanic Core.

184. Dr. William P. O'Hare, a sociologist and demographer who is director of policy studies for the Population Reference Bureau, a non-profit research and educational organization in Washington, D.C., compiled a demographic profile of the 229 Hispanic Core census tracts using full-count tract-level reports of total population and voting age, plus a special tabulation of voting age citizens provided by the Census Bureau. These core census tracts had the following aggregate characteristics:

<i>Hispanic Population Core—1980</i>					
	<u>Total</u>	<u>Hispanic</u>	<u>White</u>	<u>Black</u>	<u>Asian</u>
POP ³	1,204,279	73%	18%	4%	5%
VAP	783,677	67%	22%	4%	6%
CVAP	458,306	52%	36%	6%	4%

³POP=Total Population. VAP=Voting Age Population.
CVAP=Citizen Voting Age Population.

185. The Court finds that based on 1980 Census data, a supervisorial district can be drawn encompassing the Hispanic Core community so that the percentage of citizen voting age Hispanics in the districts would be such that Hispanics would have the *potential to elect* a candidate of their choice. While the Court agrees with defendants that plaintiffs' experts, Dr. Grofman and Dr. Estrada, could not devise a plan with a voting age citizen majority on the basis of 1980 Census data that comports with the one man one vote rule, the Court does find it persuasive that the illustrative districts were just shy of the 50 percent mark, in the 44 to 46 percent range.

186. Further, this case presents precisely the situation anticipated by Justice O'Connor, in her concurring opinion in *Gingles*, 478 U.S. at 94-95, in which the unique demographic changes Los Angeles County has undergone and continues to undergo coupled with the lingering effects and history of discrimination in the County against Hispanics, preclude the application of "a single, universally applicable standard for measuring undiluted minority voting strength." *Id.* The application of the bright line 50 percent requirement set forth by the Ninth Circuit in *Romero v. City of Pomona*, 883 F.2d 1418, 1427 (9th Cir. 1989), would be inappropriate under these facts and circumstances.

187. Therefore, even if this Court were to agree with defendants' contention that current population data is less reliable than the 1980 Census, the Court would still find that the 1981 Plan violated Section 2 of the Act based on the totality of the circumstances delineated in these findings.

188. The evidence shows that the Board of Supervisors knowingly chose to draw and adopt a plan that minimized the voting potential of the County's Hispanic population. This minimization of Hispanic voting strength was achieved by fragmenting the Hispanic Core.

189. The distribution of tracts among current supervisorial districts reflects this conscious minimization:

<u>Districts</u>	<u>Tracts</u>	<u>TPOP</u>	<u>HPOP</u>	<u>%</u>	<u>VAP</u>	<u>HVAP⁴</u>	<u>%</u>
1	77	433,173	299,648	69%	277,169	174,664	63%
2	50	226,318	155,332	69%	153,645	97,516	63%
3	104	538,093	418,750	78%	348,257	253,564	73%
5	2	6,694	3,749	56%	4,606	2,278	49%
Total	233	1,204,279	877,478	73%	783,677	528,021	67.4

<u>Districts</u>	<u>Tracts</u>	<u>TCVAP</u>	<u>HACAP</u>	<u>%</u>
1	77	190,705	95,950	50%
2	50	68,954	22,925	33%
3	104	195,445	117,077	60%
5	2	3,202	1,374	43%
Total	233	458,306	237,326	52%

190. No citizenship data by the Census Bureau with respect to the 1980 decennial census was available in time for the 1981 redistricting process.

2. Growth in Hispanic Population Since 1980

191. The demographics of Los Angeles County have changed dramatically since 1980.

192. The population data for Los Angeles County can be summarized as follows:

	<i>1980 Census</i>				
	<u>Total</u>	<u>Hispanic</u>	<u>White</u>	<u>Black</u>	<u>Asian/Other</u>
County POP	7,477,503	27.6%	52.9%	12.4%	7.1%
Hispanic	1,359,907	74.4%	13.4%	4%	6%
Core POP ⁵					

⁴TPOP=total population. HPOP=Hispanic population. TVAP=total voting age population. HVAP=Hispanic voting age population. TCVAP=total citizen voting age population. HCVAP=Hispanic citizen voting age population.

⁵Hispanic population core is a geographic area represented by 229 census tracts, 226 of which had a total population that was 50 percent more Hispanic in 1980.

1985 PEPS Population Estimates

	<u>Total</u>	<u>Hispanic</u>	<u>White</u>	<u>Black</u>	<u>Asian/Other</u>
County	8,018,210	30.4%	47.2%	12.0%	10.3%
Core	1,359,907	74.4%	13.4%	3.5%	8.8%

1987 PEPS Population Estimates

County	8,418,817	34.4%	42.8%	11.5%	11.3%
Core	1,519,630	77.2%	11.0%	3.0%	8.7%

1989 PEPS Population Projections

County	8,718,710	35.8%	40.8%	11.2%	12.2%
Core	1,602,484	78.2%	9.7%	2.9%	9.3%

1990 PEPS Population Projections

County	8,880,109	36.6%	39.8%	11.0%	12.6%
Core	1,648,827	78.7%	9.0%	2.9%	9.5%

193. According to PEPS data, the number of Hispanic persons in Los Angeles County increased by more than 850,000 between 1980 and 1987 and that the number of Hispanics in Los Angeles County is projected to increase by almost 350,000 more between 1987 and 1990.

194. The population of Los Angeles County grew by 12.3 percent between 1980 and 1987. The Hispanic population grew by 42.7 percent during this period.

195. By 1990, Hispanics are expected to constitute 35.8 percent of the County's total population.

196. Between 1980 and 1987, the number of non-Hispanic whites decreased by 378,000. In 1980, whites comprised 53.2 percent of the total population. In 1987, whites made up 42.8 percent of the population.

197. According to PEPS projections, non-Hispanic whites will constitute 39.8 percent of the County's population by 1990.

198. The Hispanic population growth in Los Angeles County during the 1980's has occurred primarily in areas where there was

already a significant Hispanic presence in 1980. Almost two-thirds of the Hispanic population growth between 1980 and 1987 has occurred in census tracts where Hispanics made up more than 25 percent of total population in 1980.

199. As the Court stated in its [sic] findings on the 1981 Redistricting *supra*, the post-1980 growth in Los Angeles County's Hispanic population was foreseeable at the time of the 1981 redistricting because it reflects a series of long-term demographic trends that were evident by 1981. The County's Hispanic population had increased significantly in each of the last three decennial censuses and the County's white non-Hispanic population showed a sharp decline between 1970 and 1980.

200. Spanish-surnamed persons made up 55.6 percent of the registered voters in the Hispanic Core in November 1988.

3. Accuracy of Post-Census Data

201. The Court finds that post-census data is a more accurate indicator than the 1980 Census of current demographic conditions in Los Angeles County. Specifically, the Court considers the PEPS estimates and projections to be a unique and reliable source of information for this purpose.

(a) Reliability of PEPS Data

202. PEPS had its genesis in a population research project begun at the University of California at Los Angeles and later transferred to the Los Angeles County government.

203. The process of producing a set of PEPS estimates and projections is referred to as an iteration. There have been two iterations of the PEPS process. The first iteration produced estimates for 1985 and projections for 1990. The second iteration produced estimates for 1987 and projections for 1989 and 1990.

204. The PEPS population estimates are based upon a combination of information from the 1980 Census, the California De-

partment of Finance, the United States Bureau of the Census Current Population Survey, and administrative and vital records.

205. Estimates are based on observations of what occurred in the past according to administrative records. Projections study past and present trends and estimate future situations.

206. The racial and ethnic groups reported by PEPS include total population, Latino⁶ population, white non-Latino population, black population, and Asian/Other. The PEPS Latino category is designed to include persons whose origins are from Mexico, Central or South America. The PEPS black and Asian categories include persons who identify themselves as black and Spanish origin or Asian and Spanish origin.

207. PEPS made no attempt to estimate or project the number of citizens in Los Angeles County.

208. PEPS data has been relied on for planning purposes by the Los Angeles County government, including the Department of Health Services, the Department of Mental Health, the Sheriff's Department, the Superior Court system, the Municipal Court system and the Public Library system.

209. Population figures for Hispanics from PEPS data are consistent with data from the Census Bureau estimating that by 1985, the number of Hispanics in Los Angeles County had climbed to 2,742,700, an increase of nearly 700,000 from 1980.

210. Dr. Nancy Minter, who supervised most of the work on the first and second iterations, testified that in her opinion, the 1985 PEPS estimates are a more accurate reflection of current population in Los Angeles County than the 1980 Census at the countywide level and when the tract data is aggregated, to the supervisorial district level.

⁶PEPS uses the term "Latino." The Census uses the term "Hispanic." Latinos are a subgroup of Hispanics. In Los Angeles County, the overwhelming majority of Hispanics are Latinos.

211. The Court concludes that the "glitch" in the 1987 PEPS estimates and the 1989 projections which consisted of the omission of certain death records for the cities of Long Beach and Pasadena from the calculations for the second PEPS iteration did not affect the 1985 population estimates generated by the first iteration.

212. Dr. Minter testified that in the second PEPS iteration, the white non-Hispanic population Countywide may have been underestimated by approximately 100,000 persons, and that the Asian/Other population may have been overestimated by approximately 100,000 persons.

213. Mr. Jerry Lubin, the director of the PEPS project, testified that after having discovered this "glitch," he never told PEPS users to use the 1985 rather than the 1987 estimates or to ignore the 1987 estimates.

214. Dr. O'Hare performed additional analyses of the 1985 estimates, the 1987 estimates and the 1989 projections after disclosure of the "glitch."

215. The comparison of PEPS estimates and projections with the Department of Finance and Census Bureau city estimates revealed an extremely strong level of consistency among the three sets of data. While the PEPS estimates and projections for Long Beach and Pasadena did show a greater degree of difference from the other two data sets than did the other five cities for 1987 and 1989, the degree of difference was relatively small.

216. The Court concludes that the missing data referred to by Dr. Minter and Mr. Lubin does not appear to have had any significant impact on the reliability of the second PEPS iteration as to total population data or as to the reliability of those estimates for the Hispanic population.

217. The Court concurs with the conclusion reached by Dr. O'Hare, that the 1985, 1987 and 1989 PEPS data are reliable

population estimates and projections, and that, even with the "glitch," each set of data provides a more accurate reflection of Los Angeles County's current population than does the 1980 Census.

218. The Court is unwilling, therefore, to reject Dr. Estrada's estimate of Hispanic citizenship proportions in Hispanic Opportunity Districts I and II in 1989 which utilize PEPS projections and the 1987 PEPS estimates. (See discussion of Estrada Plans *infra*).

219. As defendants' expert, Dr. W.A.V. Clark, testified, "the 1985, 1987, 1989 and 1990 [PEPS data] are all part of one project, to the extent that you can use the data and make comments about it. . . . So it is all part of one project, and I don't differentiate in my mind particularly between any one of those estimates or projections. I think of them all as having about the same reliability, recognizing that there [sic] all keyed back to a base line census point."

220. Dr. Clark testified that the reliability of PEPS data increases as it is aggregated, and agreed that when PEPS tract data is aggregated to the level of a Supervisorial district, "you would be on quite safe ground."

221. It is this Court's finding that the Los Angeles County's 1985 and 1987 PEPS tract-level estimates of total population and population by race and ethnicity; and the 1989 PEPS tract-level projections of total population and population by race and ethnicity are an acceptable and reliable basis under California law for the intercensal redistricting of Los Angeles County Supervisorial districts.

4. Citizen Voting Age Population

222. In measuring the citizen voting age population, the Court has considered 1980 Census sample data on citizenship, Hispanic voter registration from 1982 to 1988, and post-1980 estimates of citizen voting age population.

223. The Court finds that sample data from the 1980 Census on citizenship by age and ethnicity is the most reliable measure of the Hispanic citizen voting age population as it existed in 1980.

224. The Court, however, agrees with the contention of the United States and finds that, for practical reasons, decennial census counts of voting age citizen population cannot be an exclusive measure of geographic compactness. Total population data and voting age population data are available for redistricting purposes promptly after the decennial census is taken, while citizenship data is not released until several years later. For example, following the 1980 Census, the Bureau of the Census did not release citizenship data until 1983 and does not anticipate being prepared to do so after the 1990 Census until 1992-3.

225. No figures were published by the Census for the number of voting age citizens in major race/ethnicity groups in each census tract in Los Angeles County based upon the 1980 Census.

226. The Census Bureau prepared two special tabulations at the request of the Justice Department providing a breakdown of sample data concerning the number of voting age United States citizens, according to race and ethnicity and a cross-tabulation between self-identified Spanish-origin status and Spanish-surname status, among voting age citizens, by 1980 Census tract.

227. This special tract-level tabulation prepared by the Census found a total of 4,515,232 citizens of voting age in the County and a total of 659,368 Hispanic citizens of voting age in the County. With the sampling error, the number of Hispanic citizens of voting age in 1980 was between 649,172 and 669,564.

228. Many jurisdictions, including Los Angeles County, will be legally required to complete their redistrictings before citizenship data becomes available after the 1990 Census.

5. *Voter Registration and Turnout*

229. Between 1982 and 1988, Spanish-surname voter registration increased from 10.5 percent to 13.4 percent, and the estimated Hispanic voter registration from 12.3 percent to 14.6 percent in Los Angeles County.

230. Dr. Grofman reviewed data concerning voter registration and turnout and concluded that as a result of differential rates of voter registration and turnout between Hispanics and non-Hispanics in Los Angeles County, the proportion of Hispanic voting age citizens who are registered and who turnout to vote is considerably lower than non-Hispanics. Consequently, when Spanish-surnamed registered voters or Spanish-origin registered voters comprise more than 50 percent of the registered voters in a district, that translates into a situation in which the Hispanic citizen voting age population in the district will in fact be 50 percent or greater.

231. Statistics for Spanish-surnamed and estimated Spanish-origin registered voters were not available for Los Angeles County for any election prior to November 1982.

232. According to the Field Institute's California Opinion Index for January, 1988, among adult citizens eligible to vote in California, Hispanics were registered at lower rates than non-Hispanics in 1987. The official state registration figures were adjusted by the Field Institute to account for estimated "deadwood" and duplication in the voting rolls. The Field Institute also reported lower Hispanic turnout for the 1986 general election.

233. Dr. Minter, testified that voter registration is not used in PEPS because it is too volatile. The Court, however, finds the examination of Spanish-surname and estimated Spanish-origin registered voter data useful in determining a minimum rate for measuring Hispanic citizen voting age population.

6. *Misreporting of Citizenship*

234. There are no official Census Bureau adjustments to the 1980 data for misreporting of citizenship.

235. Dr. Jeffrey Passel asserts that, two million non-citizens nationwide falsely reported themselves as citizens in the 1980 Census. Passel's method for determining this misreporting was to compare the numbers of alien population based on the census count, which includes legal and undocumented aliens, with INS numbers of the legal resident population derived directly from the alien address registration system, or the I-53 data.

236. Dr. Passel's analysis concluded that census counts of naturalized citizens were higher than the estimate of naturalized citizens based on INS data.

237. Dr. Passel's studies are not considered corrections to the decennial census data as they were performed for research purposes. This research is based on national estimates with an unknown range of error. For example, Dr. Passel's national estimates of naturalization misreporting do not fully account for derived citizenship, that is, the acquisition of citizenship by a foreign-born child upon the naturalization of one or both parents. The greater the number of derived citizens, the more inaccurate are Dr. Passel's citizen corrections.

238. Defendants' experts, Dr. Clark and Professor Siegel testified that, in their opinions, the special tabulation of voting age citizen data from the 1980 Census is not accurate because a significant number of persons in Los Angeles County erroneously reported that they were United States citizens.

239. Dr. Clark did not rely upon the Census Bureau's special tabulation of voting age citizens for his analysis but instead developed a procedure to estimate citizen voting age population independently of the special tabulation. Dr. Clark testified that the adjustment factor was derived from the Warren/Passel methodology and applied to the Hispanic population in the County as a whole.

240. It is inappropriate, in the Court's mind, to substitute the estimates of Dr. Clark in place of the official Census data special

tabulation. The procedure utilized by Dr. Clark does not take advantage of census tract-level information for voting age population or other variables more detailed than total population.

241. Dr. Clark applied his citizenship misreporting estimates to 1980 Census Hispanic total population data; to post-1980 estimates of citizen voting age population; and to modify the procedure of Dr. O'Hare for estimating Hispanic voter registration.

242. The difficulty the Court has with the Clark application of the Passel methodology is that the estimates of misreporting of citizenship employed by Dr. Passel relied upon national correction factors applied to local data. These are referred to as synthetic assumptions. Because such a synthetic correction procedure applies a constant factor to all subareas, local variations in the underlying error will necessarily produce inaccurate results. The greater the local variation, the greater the inaccuracy.

243. Professor Siegel testified that he reviewed and approved of Dr. Clark's estimates of voting age citizens, yet he did not know basic facts about how those estimates were performed, the number of self-reported Hispanic voting age citizens in Los Angeles County in 1980, the adjusted number used by Dr. Clark, nor the number of voting age Hispanics who supposedly misreported their citizenship.

244. Professor Siegel, while working for the Bureau of the Census, testified in *Fair v. Klutznick*, that "we . . . [the Bureau of Census] do not believe that an estimate of unlawful residents can be made which is of a quality sufficient for apportionment purposes." In a later case, *Ridge v. Verity*, Professor Siegel submitted a declaration stating that there existed an entirely feasible method by which undocumented aliens from the 1990 census could be excluded for purposes of congressional apportionment.

245. As an employee of the Census Bureau, Professor Siegel testified that synthetic adjustments for population undercount of-

ten produced "garbage" at the local level. In this litigation, Professor Siegel has used synthetic adjustments to estimate undercount of the Hispanic population in Los Angeles County, and has endorsed Dr. Clark's use of synthetic adjustments for citizenship misreporting in Los Angeles County.

246. In addition, the Court finds the Passel methodology problematic in its estimate of Hispanic citizen voting age population. The adjusted alien population used by Passel was for persons born in "Spanish" countries, regardless of whether the aliens identified themselves as Hispanics. To subtract non-Hispanic aliens born in these countries from the Spanish-origin population erroneously reduces the Spanish-origin citizen population.

247. The Court finds it noteworthy that the Heer/Passel study and Dr. Passel's data reported in the national-level study, demonstrate that even with a control for period of entry, the Mexican-born population in Los Angeles County was on average only half as likely to report being naturalized than was the Mexican-born population in the balance of the United States. As the table below illustrates:

	<u>Total Population Born in Mexico</u>	<u>Total Naturalized</u>	<u>Self-Reported Citizenship</u>
<i>Data Entered Before 1970</i>			
Nationwide	988,000	385,000	39.0%
LA County	241,500	67,200	27.8%
Outside LA County	746,500	317,800	42.6%
<i>Entered 1970-74</i>			
Nationwide	569,000	103,000	18.1%
LA County	201,400	23,300	11.6%
Outside LA County	367,600	79,700	21.7%
<i>Entered 1975-80</i>			
Nationwide	769,000	92,000	12.0%
LA County	254,900	17,000	6.7%
Outside LA County	514,100	75,000	14.6%
<i>All Periods of Entry</i>			
Nationwide	2,326,000	580,000	24.9%
LA County	697,800	107,500	15.4%
Outside LA County	1,628,200	472,500	29.0%

248. Having considered the estimates of Dr. Clark and Professor Siegel as well as the methodology utilized to derive these citizen voting age population estimates, the Court is not convinced that these estimates will produce a more accurate measure of voting age citizens than will the special tabulation of the Census. Moreover, the Court is unable to determine the magnitude of citizenship misreporting in the 1980 Census special tabulation data for the County and finds that substituting Dr. Clark's and Professor Siegel's estimates of citizen voting age population for the official Census data would be inappropriate.

7. Undercount of Hispanics

249. There are no official Census Bureau adjustments to the 1980 data for the undercount of the minority population.

250. According to Census publications, Hispanics were undercounted in the 1980 Census by 2.2 percent to 7.6 percent, Blacks by 5.5 percent and Whites by .7 percent. The Court agrees with the Garza plaintiffs that to arrive at the most realistic figures for the population of Los Angeles County if adjustments are made for overreporting of citizenship then such adjustments must likewise be made for undercount.

8. Spanish-Surname/Spanish-Origin

251. The Census has published a list of Spanish surnames used to identify persons of Spanish surname during the 1980 Census. This Spanish-surname identifier was included in the Los Angeles County Public Use Microdata Sample (PUMS) file as well as the sample detail file for Los Angeles County from which the Census Bureau prepared special tabulations.

252. Individuals with Spanish-surnames are sometimes not of Spanish-origin, while some persons without Spanish-surnames are of Spanish-origin. According to the 1980 Census, in Los Angeles County there were 574,120 voting age citizens with a Spanish

surname and 659,375 voting age citizens who identified themselves as being of Spanish origin. Of the voting age citizens with a Spanish-surname, 88.7 percent were of Spanish origin. Of the voting age citizens without a Spanish surname, 3.6 percent were of Spanish origin.

253. The four-step procedure followed by United States' experts is outlined as follows:

- (1) The number of Spanish-surnamed registered voters were totalled within voter registration precincts and census tracts, by matching lists of registered voters from the Los Angeles County Registrar-Recorder and the 1980 Census List of Spanish Surnames.

- (2) Within the voting age citizen population for each census tract, the proportion of persons who were both Spanish surnamed and of Spanish origin among all persons with Spanish surnames was applied to the number of Spanish-surnamed registered voters whose residences lay within that tract. This produced an estimate of the number of Spanish-surnamed registered voters who were also of Spanish origin.

- (3) Within the voting age citizen population for each census tract, the proportion of persons who did not have a Spanish surname but were of Spanish origin among all persons without a Spanish surname was applied to the number of registered voters without Spanish surnames. This produced an estimate of the number of registered voters who did not have Spanish surnames but were of Spanish origin.

- (4) The two estimates of Spanish origin voters resulting from steps (2) and (3) were added together to derive the total number of registered voters of Spanish origin.

254. The estimates of Spanish-origin population derived by Dr. O'Hare are considered by this Court to be valid estimates of the number of registered voters of Spanish origin.

255. Dr. Clark modified Dr. O'Hare's methodology by reducing the number of voting age citizens in each census tract that were used to compute the estimation ratios in order to correct for misreporting of citizenship.

256. Since Dr. Clark's voter registration adjustments for misreporting of citizenship were predicated upon the proposed adjustments which the Court declined to adopt *supra*, the Court declines to adopt the adjustments to voter registration data proposed by Dr. Clark.

(a) Adjustments for "European Spanish"

257. The Court has great difficulty with the adjustments made for "European Spanish." The Court is not convinced that a clear determination can be made that Filipino, Cuban and "European" voters of Spanish origin in Los Angeles County vote differently from other voters of Spanish origin.

258. Moreover, in the 1980 Census, Spanish-origin status was determined from a separate question which asked "Is this person of Hispanic/Spanish Origin?" and then provided five choices: No (not Spanish Origin), Mexican, Puerto Rican, Cuban or Other Spanish Origin. For the ancestry question in the 1980 Census, respondents were required to fill in a blank in response to the question "What is this person's ancestry?" Ancestry Codes 1-99 reflected persons who reported Western European ancestry such as French or German. Codes 200-204 are identifiable with Spain (e.g. Spaniard, Catalanian). Codes 205 and 206 are "Spanish" and "Spanish American."

259. Under Dr. Clark's definition of "European" Spanish population, anyone with a Spanish surname who was assigned an ancestry code from 1-99, or 200-206, was removed from the Spanish surname population, regardless of whether those persons had identified themselves as Spanish origin or not.

260. For purposes of this analysis, Dr. Clark reasoned that persons who identify themselves directly with Spain do not identify with the larger Hispanic community of persons of Mexican, Central or South American origin. The assumption is that persons who identified themselves as "Spanish" or of "Spanish-American" ancestry traced their decent directly to Spain and

would not identify with the larger Hispanic community, which in Los Angeles County is predominantly of Mexican origin.

261. However, as the Census Bureau warns in its instructions regarding use of the Codes, ancestry is not a substitute for ethnicity.

262. An additional problem with Dr. Clark's analysis is that he factored out Spanish-surnamed persons with ancestry codes 1-99 and 200-206 regardless of whether they had identified themselves as Mexican Spanish-Origin, Puerto Rican Spanish-Origin, Cuban Spanish-Origin (whom he also removed separately), other Spanish-Origin, or not Spanish-Origin at all. A sizeable number of voting age citizens with ancestry codes 205 and 206 were of Mexican Spanish-Origin ethnicity (14,240). Dr. Clark factored out these individuals because they had Spanish surnames and wrote in the word "Spanish" or had designated "Spanish-American" ancestry.

263. The Court adopts the counts of Spanish surname and estimated Spanish-origin voters presented by the United States, as reasonably and accurately reflecting Hispanic voter registration and turnout in Los Angeles County between 1982 and 1988.

9. Deadwood

264. Defendants contend that the registered voter statistics provided are flawed since they contain the names of many persons who no longer reside within their listed precinct or those who are deceased. Defendants further contend that this "deadwood" is exceedingly Democratic, containing a disproportionate number of Hispanics.

265. Pursuant to the laws of the State of California, the Los Angeles County Registrar-Recorder is responsible for conducting the Registration Confirmation and Outreach Program ("RCOP") designed to identify and remove "deadwood."

266. RCOP is conducted in January of every year and consists of sending a registration confirmation postcard to voters at the residence shown on the voting rolls.

267. In even-numbered years, the confirmation postcard is sent to all registered voters in the County while in odd-numbered years it is sent only to those persons who failed to vote in the general election in the preceding November.

268. The postcard requests that it not be forwarded to another address even if the voter has moved and left a forwarding address. Thus, if the United States Postal Service is unable to deliver the card at the address listed, the card is returned to the Registrar-Recorder's office with a notation as to why that card is undeliverable.

269. If the postcard indicates the voter has moved and left no forwarding address or if their forwarding address reflects that they moved out of the County, the Registrar-Recorder's office cancels the voter registration. If the postcard indicated the person has moved within the County, the voting rolls are changed to reflect the new address.

270. Defendants are correct in their assertion that the presence of "deadwood" on the voting rolls is a problem and the Court is not completely persuaded that RCOP is effective as the sole procedure for removing such "deadwood." However, defendants have not demonstrated that the "deadwood," even if improperly remaining on the voting rolls, is disproportionately Hispanic.

271. The proportion of persons identified as Democratic who were cancelled under the provisions of the RCOP for the years 1984 to 1990 did not constitute a disproportionate share of the total cancellations in those years.

272. In addition, voters' surnames, party identifications, registration precinct numbers and census tract numbers can be re-

trieved from the computerized lists of cancellations provided by the Registrar-Recorder. These computerized lists can be matched with the Census Bureau's 1980 list of Spanish surnames, to yield accurate counts of Spanish-surnamed voter cancellations.

*Analysis by Spanish-Surnamed Voters of
Residency Confirmation and Outreach Program (RCOP)*

	<u>Total</u>	<u>Spanish Surname</u>
November 1988 Registration	3,765,368	502,885 (13.4%)
January 1989 RCOP Cancellations	132,424	14,522 (11.0%)
January 1990 RCOP Cancellations	245,138	27,102 (11.1%)

273. The Court does not find that Hispanic persons constitute a differentially greater proportion of "deadwood."

274. In addition to the registered voter data, plaintiff's expert Dr. Estrada and defendants' experts, Drs. Freeman, Minter and Clark, used differing methodologies to estimate post-1980 citizen voting age population in Los Angeles County based principally on special Census Bureau tabulations of the 1980 citizen voting age population and PEPS estimates and projections.

10. *Plaintiffs' Illustrative Plans*

1. *The Grofman Plans*

275. Dr. Bernard Grofman, United States' expert, presented five illustrative supervisorial redistricting plans each containing five districts. Plan 1 used 1980 Census data and the 1985 and 1987 PEPS estimates. Plan 2 used 1987 PEPS estimates and 1989 and 1990 PEPS projections. Plan 3 used 1989 and 1990 PEPS projections. Plans 4 and 5 used 1985, 1987, 1989 and 1990 PEPS data.

276. In devising these plans, Dr. Grofman considered such standard criteria for redistricting as compliance with the one-person, one-vote rule and avoiding minority vote dilution.

277. In each of Dr. Grofman's five plans, the total population deviation is less than 10 percent, using a valid total population base.

278. In the Grofman Plans, the Hispanic total population percentage in the most heavily Hispanic district increased during the 1980's while the white population decreased. Likewise, in each of the Grofman plans, one district as of November 1988 had an estimated Spanish-origin registered voter proportion in excess of 50 percent.

279. In Grofman Plans 3, 4 and 5, one district as of November 1988 had an estimated Spanish-origin voter turnout proportion in excess of 50 percent.

2. The Estrada Plans

280. Dr. Estrada proposed two illustrative supervisorial districts, Hispanic Opportunity Districts I and II (HOD I and HOD II). Neither HOD I nor HOD II had an Hispanic voting age citizenship population majority in 1980. In HOD I, there were 260,243 Hispanic citizens of voting age, which is 46.9 percent of the total citizen voting age population of HOD I. In HOD II, Hispanic voting age citizens comprise 282,676, or 46.9 percent of the total HOD II population. Dr. Estrada concluded that an Hispanic citizen voting age majority district could have been created in 1985.

281. In arriving at his conclusions and in devising his illustrative plans, Dr. Estrada considered such demographic factors as: Hispanic children ages 10 -17 who would turn 18 over the course of the 1980's and the higher citizenship rate associated with this group; the possible effects of mortality, out-migration and in-migration of citizens upon the 1980 base citizen voting age populations; and, the likelihood that both Asian and Hispanic citizenship rates have diminished from the 1980 rates.

282. Based on 1985 PEPS data, Dr. Estrada's HOD I and HOD II, illustrated that an Hispanic majority citizen voting age district can be created in HOD I. Assuming that citizen voting age population rates remain equal to the 1980 rates for all race/ethnic groups, by 1985 51 percent of the citizen voting age population of the HOD I district was Hispanic. Assuming that 55 percent rather than 46 percent of the Asian/Other population were voting age citizens, an Hispanic citizen voting age majority could still be created in HOD I in 1985.

283. The Garza plaintiffs demonstrated that an Hispanic majority citizen voting age district could be created in HOD I and HOD II using 1987 and 1989 PEPS data as well.

284. The Court finds that under a variety of reasonable demographic techniques, demonstrated by both plaintiffs' and defendants' experts, the demographic changes that have occurred since 1980 make it possible to draw a Supervisorial district in which Hispanics constitute a majority of the citizen voting age population.

E. POLITICAL COHESIVENESS

1. *Hispanic Candidacies in Los Angeles County 1978-1989*

(a) *Contests for Los Angeles County Supervisor*

285. Direct evidence of the voting patterns of Hispanics is unavailable for supervisorial or other countywide elections in Los Angeles County, because the ballot is secret and no exit polls exist for County elections.

286. Since 1978, Hispanic candidates have run in five supervisorial election contests: District 1 (1978 and 1982); District 3 (1978 and 1982); and District 5 (1988).

287. In the 1978 primary election in District 1, one Hispanic candidate, Alfonso Lavin, ran against three non-Hispanics, in-

cluding incumbent Peter Schabarum. Lavin is not a recognizable Spanish surname. Lavin received 7.3 percent of the vote and Schabarum received 55.7 percent of the vote.

288. In the 1978 primary election in District 3, two Hispanic candidates, Rosalio Munoz and Gonzalo Molina, ran against the incumbent, Edmund Edelman. Munoz received 11.5 percent of the vote, Molina received 14.0 percent of the vote and Edelman received 74.5 percent of the vote.

289. In the 1982 primary election in District 1, Lavin ran against incumbent Schabarum, as well as another non-Hispanic candidate. Schabarum received 64.5 percent and Lavin received 10.5 percent of the vote.

290. In the 1982 primary in District 3 Rosalio Munoz ran against incumbent, Edelman, and two other non-Hispanic candidates. Munoz received 11.8 percent of the vote and came in second behind Edelman who received 72.1 percent of the vote.

291. In the 1988 primary election for Supervisor in District 5, two Hispanic candidates, M. Enriquez-Marquez and Jose Galvan, ran against incumbent Antonovich, and seven other non-Hispanic candidates. At the time of the election, Spanish-surnamed voters comprised approximately 8 percent of the registered voters in District 5. Enriquez-Marquez placed fourth with 2.3 percent of the vote; Galvan placed last with 0.5 percent of the vote. Antonovich, who received 44.8 percent of the vote, was forced into a run-off with Baxter Ward, who received 22.4 percent of the vote in the primary.

292. All the Hispanic candidates in these supervisorial contests were minor candidates with relatively little campaign financing who had no realistic chance of mounting a serious challenge to the incumbent Supervisor.

293. Dr. Grofman analyzed three of the elections for Supervisor since 1978 which involved Hispanic candidates with Spanish surnames and one election in 1982 involving an Hispanic candidate without a Spanish surname. Dr. Grofman found that even with respect to these very minor candidates, there were substantial differences between the levels of support received from Hispanics and that received from non-Hispanics.

294. The Court further finds that analyses of Supervisorial elections are not dispositive of political cohesiveness. Rather, plaintiffs were entitled to attempt to establish political cohesion through the study and analysis of other elections within the County of Los Angeles.

295. No specific number of elections need be studied in order to determine whether voting is polarized in Los Angeles County along ethnic lines.

(b) Other Nonpartisan County Contests

296. Since 1978 there have been two election contests for Los Angeles County offices other than Supervisor in which Hispanic candidates have run: County Sheriff (1982) and County Assessor (1986).

297. In the 1982 primary election for County Sheriff, two Hispanic candidates, Alex Jacinto and Robert Feliciano, received 6 percent and approximately 20 percent of the total vote, respectively, against candidates Sherman Block, Charles Greene, and three other non-Hispanic candidates. The winner, incumbent Block, received 63 percent of the total vote.

298. In the 1986 primary election for County Assessor, the Hispanic candidate, Sid Delgado, received roughly 12 percent of the total vote against a field of eleven non-Hispanic candidates for an open seat. Delgado's share of the votes cast placed him in fourth place in the race, with the leading candidate, John Lynch, receiving 21 percent of the vote.

299. Based upon the relative vote shares and campaign expenditures of the Hispanic candidates in the 1982 Sheriff's race and the 1986 Assessor's race, the Court agrees with Dr. Grofman's conclusion that these were relatively minor candidates.

300. Dr. Grofman conducted analyses of the 1982 primary race for Sheriff and the 1986 primary race for Assessor. Based upon his analysis, Dr. Grofman found a dramatic divergence between the support levels from Hispanics versus those from non-Hispanics for the two Hispanic candidates in the 1982 Sheriff primary. The Hispanic support level, based on Spanish-origin data, for Jacinto and Feliciano combined was estimated at 80 percent, while the support of non-Hispanic voters for these two candidates was estimated at only 20 percent. According to the estimates of Dr. Grofman, Feliciano was the plurality choice of the Hispanic voters. Similarly in the 1986 Assessor race, the Hispanic candidate, Delgado, was estimated to have been the plurality choice of Hispanic voters in a very crowded field of candidates with 35 percent support among Hispanics compared to only 10 percent support from non-Hispanics.

(c) Non-Countywide Elections

301. Since 1983 there have been seven elections for Los Angeles City Council in which Hispanics have run for office: District 1 (1987 and 1989); District 4 (1983); District 7 (1989); and District 14 (1983, 1985, and 1987).

302. In the 1983 primary election for District 14, two Hispanic candidates, David Sanchez and Steve Rodriguez, received 2.2 percent and 42.6 percent of the vote respectively in a field of six candidates, which included the Anglo incumbent, Art Snyder, and three other non-Hispanic candidates. Snyder won the election with 50.1 percent of the vote.

303. In a subsequent special election in District 14 in December 1985, six Hispanic candidates and one non-Hispanic candidate

ran for an open seat created by the resignation of Councilman Snyder. One of the Hispanic candidates, Richard Alatorre, won the election with 59.58 percent of the vote and became only the second Hispanic elected to the Los Angeles City Council since at least 1900. Dorothy Andromidas, the sole non-Hispanic candidate, received about one percent of the votes cast.

304. As a result of the 1985 lawsuit filed against the City of Los Angeles to remedy the fragmentation of the Hispanic population concentrations in the eastern part of the city, *United States, et al. v. City of Los Angeles*, No. CV 85-7739 JMI (JRx) (C.D. Cal. 1985), the City of Los Angeles chose to redraw the council districts so as to create a second Hispanic majority city council district, Council District 1.

305. As of the 1988 general election, persons of Spanish origin constituted approximately 46 percent of the registered voters in Council District 1.

306. In the special election in Council District 1 on February 3, 1987, two Hispanic candidates ran against two non-Hispanic candidates for the vacant seat. The two Hispanic candidates received 82.5 percent of the vote. One of the Hispanic candidates, Gloria Molina, was elected with 57.0 percent of the vote.

307. The special elections for Los Angeles City Council District 14 in 1985 and Los Angeles City Council District 1 in 1987 both occurred in districts which contained a clear majority Hispanic population.

308. In April 1989, eight candidates, including two Hispanic candidates, Irene Tovar and Richard Yanez, ran in the primary election for Los Angeles City Council District 7. Tovar received 9.5 percent of the total vote; Yanez received 1.3 percent; and the incumbent, Ernai Bernardi, received 41.9 percent.

309. Dr. Grofman analyzed the 1983 primary contest in City Council District 14 and the 1989 primary in City Council Dis-

trict 7. The population of District 14, which is located essentially within the Hispanic Core, is greater than 60 percent Hispanic. In 1983, Spanish-surnamed persons constituted 49.9 percent of the registered voters in District 14. In contrast, District 7, which is located in the San Fernando Valley area, has a much smaller proportion of Hispanics among its population. As of the 1988 general election, only 25.49 percent of the registered voters in Council District 7 were of Spanish origin. Dr. Grofman's analysis found high levels of Hispanic political cohesion in both of these contests.

(d) Contests for Partisan Offices in Los Angeles County

310. According to the 1980 Census, three of the congressional districts in the County had Hispanic citizen voting age populations of at least 35 percent: Congressional District 25 (42.1 percent), Congressional District 30 (37.3 percent), and Congressional District 34 (35.2 percent).

311. As of the 1982 general election, Congressional Districts 25, 30 and 34 also contained the greatest proportions of Hispanic registered voters of all the congressional districts in the County.

312. In the 1982 Democratic primary elections, an Hispanic candidate prevailed in each of these three congressional districts: Edward Roybal in Congress District 25, Matthew Martinez in Congressional District 30, and Esteban Torres in Congressional District 34. The three nominees went on to victory in the general elections of 1982. Moreover, these Hispanic candidates continued to prevail in these three congressional districts for all subsequent Democratic primary and general elections.

313. These three congressional districts are located within the Hispanic Core area of Los Angeles County.

314. No Hispanic has been elected in any other congressional district wholly within Los Angeles County since at least 1982.

315. As of the 1982 general election, State Senate Districts 24 and 26 also contained the greatest proportions of Hispanic registered voters of all the state senate districts in Los Angeles County.

316. In the 1982 Democratic primary elections, an Hispanic candidate prevailed in both of these state senate districts: Art Torres in Senate District 24 and Joseph Montoya in Senate District 26. In turn these nominees went on to victory in the general elections of 1982. Moreover, these Hispanic candidates have prevailed in these state senate districts for all subsequent Democratic primary and general elections.

317. Both of these senate districts are included within the Hispanic Core area of Los Angeles County.

318. No Hispanic has been elected to any other state senate district wholly within Los Angeles County since at least 1982.

319. According to the 1980 Census, four of the state assembly districts in Los Angeles County had Hispanic citizen voting age populations of at least 35 percent. Assembly District 55 (41.4 percent), Assembly District 56 (57.6 percent), Assembly District 59 (43.5 percent) and Assembly District 60 (37.4 percent).

320. As of the 1982 general election, Assembly Districts 55, 56, 59 and 60 also contained the greatest proportions of Hispanic registered voters of all the state assembly districts in Los Angeles County.

321. In three of these four state assembly districts (Assembly District 55, Assembly District 56, and Assembly District 59), Hispanic candidates prevailed in both the Democratic primary and general elections of 1982. In turn, Hispanic candidates prevailed in these three districts in all subsequent Democratic primary and general elections through 1988. In only one of these assembly districts, District 60, did a non-Hispanic candidate pre-

vail in the Democratic primary and general election contests of 1982 and subsequent years. No Hispanic candidate has run in the Democratic primary for Assembly District 60 since 1982.

322. Each of the three assembly districts in which Hispanic candidates have prevailed is located within the Hispanic Core area of Los Angeles County.

2. Analysis of Ethnically Polarized Voting

(a) Methodology

323. Dr. Allan Lichtman has been recognized as an expert witness in bloc voting, political systems, and quantitative and socioeconomic analysis, among other matters, in more than 15 federal court cases.

324. Dr. Grofman has been recognized as an expert witness in racial or ethnic vote dilution in numerous federal court cases. His testimony concerning racially polarized voting was adopted by both the District Court and the United States Supreme Court in *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984), *aff'd in part, rev'd in part*, *Thornburg v. Gingles*, 478 U.S. 30 (1986). In addition, Dr. Grofman was the sole expert witness for the plaintiffs in *Cruz Gomez v. City of Watsonville*, 863 F.2d 1409 (9th Cir. 1988), *cert. denied*, U.S. , 109 S. Ct. 1534 (1989), in which his opinions were adopted by the Ninth Circuit Court of Appeals.

325. Drs. Lichtman and Grofman used standard methods in the analysis of electoral data to determine whether voting is ethnically polarized in Los Angeles County elections, considering Hispanics versus non-Hispanics, and whether the existing system of supervisorial districts impedes the ability of Hispanic citizens to elect representatives of their choice and fully participate in the political process. Their analyses of ethnically polarized voting follow procedures that are consistent with the standards prescribed by the Supreme Court in *Gingles*, 478 U.S. at 52-59.

326. Plaintiffs' experts determined the voting behavior of Hispanics and non-Hispanics in Los Angeles County by comparing the ethnic composition of precincts to the division of the vote among competing candidates at each precinct. Ecological regression, the standard method for inferring the behavior of population groups from data collected for aggregate units, was used to estimate the voting behavior of non-Hispanics and Hispanics. The regression methodology generates prediction equations that indicate how voting responds to variations in the proportions of Hispanics and non-Hispanics in each precinct. These equations can provide the information needed to estimate the average voting of non-Hispanics and Hispanics, respectively, in the election district under analysis.

327. Ecological regression, therefore, provides estimates of the average voting behavior of the groups in question. It does not purport to determine the voting behavior of individuals. Nor does it purport to estimate exactly the voting behavior of non-Hispanics and Hispanics in each precinct.

328. Drs. Lichtman and Grofman also utilized a technique termed "extreme case analysis." This technique examines the actual choices of voters in the most heavily non-Hispanic and the most heavily Hispanic precincts in a jurisdiction. If voting is polarized along ethnic lines, there should be differences in the percentages of votes going to the non-Hispanic and Hispanic candidates in the most heavily non-Hispanic and most heavily Hispanic precincts.

329. Ecological regression and extreme case analysis were also supplemented by the examination of squared correlation coefficients, an indicator of the reliability of a finding of polarized voting. The possible value of the squared correlation coefficient (R^2) varies from 0 to 1.0, with values close to 1.0 indicating that the percentage of the vote cast for the Hispanic candidates can be nearly perfectly predicted from the Hispanic versus non-His-

panic composition of political units. Although no particular value of R^2 arbitrarily defines the distinction between "high" and "low", social scientists often find values in excess of .25 to be indicative of a substantial relationship between variables and generally consider values of .5 or greater as indicative of a very strong relationship.

330. As indicated by the *Gingles* decision, plaintiffs' experts divided the analysis of polarized voting into two components: the degree to which the Hispanic electorate cohesively supports Hispanic candidates for public office and the degree to which the non-Hispanic electorate bloc votes for non-Hispanic candidates.

331. The analysis of Hispanic cohesion and non-Hispanic bloc voting provides an indication of whether Hispanic voters have an opportunity to elect candidates of their choice in the existing supervisorial districts. In particular, the issue is whether bloc voting by non-Hispanics will normally be sufficient to defeat Hispanic candidates in the existing Supervisorial districts with the greatest Hispanic concentration.

332. Dr. Grofman analyzed eight nonpartisan elections involving non-Hispanic versus Hispanic candidates in Los Angeles County from 1978 to 1989; four were for County Supervisor, one for sheriff, one for assessor and two for Los Angeles City Council. Of the eight contests analyzed, only the assessor's contest was an election for an open seat.

333. In addition, Dr. Lichtman analyzed 12 open-seat partisan elections involving Hispanic versus non-Hispanic candidates for U.S. Congress, state senate, and state assembly from 1982 to 1988. Of the 12 contests analyzed, five were primaries, four Democratic and one Republican, and several were general elections, including one special run-off election.

334. Dr. Lichtman focused on open-seat elections because generally they are the most hotly contested of all races and provide the clearest indication of whether or not Hispanics and non-Hispanics systematically differ in their choices of candidates.

335. There are no substantive differences in results of the ecological regression and extreme case analyses between the analyses based upon Spanish surname and the analyses based upon Spanish origin data.

336. There is no dispute that plaintiffs' experts accurately computed and reported the results of the application of the ecological regression methodology. Dr. Jerome Sacks, a statistician and one of the defendants' experts, replicated plaintiffs' analysis and produced results that were not substantively different.

(b) Results of Analysis

337. The analysis of polarized voting in this case centered on the exposition and critique of ecological regression as a technique for analyzing group voting behavior.

338. Defendants presented the testimony of three statisticians, Dr. Stephen Klein, Dr. Jerome Sacks, and Dr. David Freedman, who individually and collectively criticized the use of the ecological regression methodology to analyze group voting behavior.

339. Defendants' experts do not dispute that as a general matter in the elections analyzed by plaintiffs' experts the proportion of the vote for the Hispanic candidates increases as the proportion of Hispanics in the precinct increases.

340. The ecological regression methodology can produce physically impossible results.

341. In the 20 elections analyzed by Drs. Grofman and Lichtman, physically impossible results were produced for only four

of the 40 estimates of Hispanic and non-Hispanic voting. All involved estimates of Hispanic support for the Hispanic candidate that exceeded 100 percent.

342. All four physically impossible estimates were for general elections and three of four were just a few percentage points over the 100 percent mark.

343. Voting analysts often encounter estimates over 100 percent when voting is highly polarized and the slope of the ecological regression line is steeply pitched. Dr. Lichtman testified that in numerous jurisdictions where he encountered such estimates, he was able to verify the accuracy of the method of bounds through examination of nearly homogeneous precincts that included a majority of the population group in question.

344. Extreme case analysis also shows the accuracy of using the method of bounds for the one instance in which an estimate departs substantially from 100 percent, the estimate of the percent of Hispanics voting for the Hispanic candidate in the 1982 general election in Assembly District 52. Although there are no heavily Hispanic precincts in Assembly District 52, examination of Dr. Sacks' scattergram for this election shows that there are a large number of precincts in which the percentage of registrants with a Spanish origin is 10 percent or less. Dr. Lichtman's extreme case analysis shows that in precincts where Spanish-origin registrants are 10 percent or less, 25 percent of the vote was actually cast for the Hispanic candidate. This percentage conforms almost exactly to the 24 percent non-Hispanic crossover vote derived by the methods of bounds employed by Dr. Lichtman.

345. Defendants' experts also content that ecological regression is unreliable because it depends on the unreasonable assumption that voting behavior is constant across precincts except for random variation. The regression equation assumes that Hispanics

give the same level of support to Hispanic candidates in every precinct.

346. The Court agrees with plaintiffs that the so-called constancy assumption does not significantly undermine the reliability of the estimates gained through the ecological regression methodology in this case.

347. The ecological regression technique is designed to provide accurate estimates only of average group voting behavior in a particular jurisdiction. As a result, the technique can yield accurate estimates even in the presence of substantial random variations in voting behavior within the studied jurisdiction. The technique can also produce accurate estimates in the presence [of] non-random variations, so long as such variations are not related to the percentage of Hispanics within a jurisdiction.

348. Defendants' experts testified that an omitted variable or a variable related both to voting behavior and to the percentage of Hispanic registrants in a precinct may be distorting the ecological regression analysis. The degree of bias will depend on the strength of the omitted variable's independent influence on voting behavior and on the strength of its relationship to the percentage of Hispanics in a precinct.

349. Defendants' experts advance the theory that such variables as Democratic affiliation and low socioeconomic status impact on voting behavior by overriding ethnic affiliation.

350. While in theory there exists a possibility that ecological regression could overestimate the results of ecological regression, experts for defendants have failed to demonstrate that there is in fact any substantial bias resulting from the omitted variable problem in Los Angeles County.

351. In a further attempt to discredit the reliability of the ecological regression technique, defendants' experts developed the "neighborhood model" to provide an alternative method of mea-

asuring ethnically polarized voting. The neighborhood model posits that all voters within a precinct vote alike irrespective of ethnic diversity within such a precinct.

352. At its logical boundaries, the omitted or contextual variable theory blends into the neighborhood model: both theories posit that non-ethnic factors impact on voting behavior to the extent of overriding ethnic affiliation. Thus, the greater the number of asserted contextual variables related to the ecological composition of the precinct, the more the omitted variable theory begins to resemble the neighborhood model.

353. The Court concludes that the neighborhood model's emphasis on the ecological structure of a precinct as a determinant of voting behavior impedes it from detecting the presence of polarized voting. As such, it is not a reliable method of inferring group voting behavior.

354. Defendants' critique of plaintiffs' squared correlation coefficient (R^2) and extreme case analyses reiterates their constancy assumption objection to the ecological regression methodology.

355. The Court finds that the ecological regression and extreme case analysis performed by plaintiffs' experts, as supplemented by the analysis of correlation coefficients are sufficiently reliable to make the requisite determinations about polarized voting between Hispanics and non-Hispanics.

356. The results of ecological regression and extreme case analysis reveal that Hispanic and non-Hispanic voters in Los Angeles County are polarized along ethnic lines in their choices of candidates.

3. Cohesiveness of Hispanic Voters

357. The results of the ecological regression analyses demonstrated that for all elections analyzed, Hispanic voters generally

preferred Hispanic candidates over non-Hispanic candidates.⁷ In 15 of the 19 elections studied,⁸ a majority of voters with Spanish surnames voted for Hispanic candidates. In 14 of these 15 contests, the Hispanic vote for the Hispanic candidates was much higher, equal to or greater than 32 percentage points, than the non-Hispanic vote for the Hispanic candidates. In 14 of the 19 elections, voters with Spanish surnames voted for Hispanic candidates at a level equal to or greater than the 60 percent that is generally considered to be a landslide victory in American political history.

358. Among the 19 contests studied, Dr. Lichtman properly isolated for analysis the eight nonpartisan contests and the four partisan primary contests. The Supervisorial elections are nonpartisan contests in which candidates compete without explicit party identification. Similarly, in partisan primary contests candidates compete under the same label so that the influence of party identification is eliminated. Since a better that [sic] two-thirds majority of Hispanics in the County are Democrats, their behavior in general elections might be influenced by party affiliation in the sense that they may be more likely to vote for the Democratic nominee. Thus, as compared to general election contests, nonpartisan and primary races provide the most stringent test of Hispanic cohesion.

⁷The ecological regression analysis showed that voting was ethnically polarized in the 1988 Republican primary contest with 60 percent of voters with a Spanish surname and 59 percent of voters with Spanish origin opting for the Hispanic candidate compared to 45 percent of voters without a Spanish surname and 44 percent of voters without a Spanish origin. But Dr. Lichtman testified that he did not rely on the results of the analysis because squared correlation coefficients were very low indicating a lack of reliability of the analysis. In addition, he noted that at least since 1982 all Hispanics elected to public office in Los Angeles County have run as Democrats.

⁸Hereafter, the reports of the analyses exclude the 1988 Republican primary for the reasons noted in the preceding footnote.

359. In eight of the 12 nonpartisan and partisan primary elections, a majority of voters with Spanish surnames voted for Hispanic candidates. In seven of the 12 contests, a 70 percent or greater majority of voters with Spanish surnames united behind Hispanic candidates. On average, about 64 percent of the Spanish-surnamed voters supported Hispanic candidates in these contests.

360. There were special circumstances involved in the five nonpartisan contests in which the cohesion levels were lower than 60 percent. The five contests include the 1986 contest for assessor and the four Supervisorial contests.

361. In the assessor's contest, although the lone Hispanic candidate, Delgado, failed to gain majority support from Hispanic voters, he still finished in first place among Hispanic voters despite a crowded field that included 12 candidates. Delgado garnered the support of 38 percent of voters with a Spanish surname and 35 percent of voters with a Spanish origin. The second-place finisher among Hispanic voters garnered the support of 20 percent of the voters with either a Spanish surname or a Spanish origin. Overall, as a result of Delgado's support among Hispanics, he finished in fourth place among the 12 candidates. Similarly, in the 1988 Supervisorial race in District 5, Enriquez-Marquez, although a much weaker candidate overall than Delgado, finished first among Hispanic voters in a likewise crowded field of ten candidates. Enriquez-Marquez garnered the support of 36 percent of voters with a Spanish surname and 33 percent of voters with a Spanish origin. The second-place finisher among Hispanic voters garnered the support of 21 percent of voters with a Spanish surname.

362. In only one of four Supervisorial contests analyzed by Dr. Grofman did a majority of Spanish-surname or Spanish-origin voters support the Hispanic candidates. The remaining three Supervisorial contests, however, involved relatively marginal His-

panic candidates. In the 1982 primary contests in Supervisorial Districts 1 and 3, and in the 1988 primary contest in Supervisorial District 5, the Hispanic vote for the Hispanic candidates was much higher than their overall percentages. For these three Supervisorial contests, the Hispanic candidates received a mean vote of 37 percent from Spanish-surnamed voters and a mean vote of 34 percent from Spanish-origin voters compared to an overall mean vote of but 8 percent.

363. The 1982 primary contests provide a useful means of analyzing Hispanic cohesion since six of the 19 elections analyzed were held on primary election day in 1982. In contests for U.S. Congress in the 1982 primary in Congressional District 30 and Congressional District 34, the Hispanic candidates received 78 and 90 percent, respectively, of the vote of Spanish-surnamed voters and 78 and 88 percent, respectively, of the vote of Spanish-origin voters. In the contest for state assembly in the 1982 primary for Assembly District 59, the Hispanic candidates received 83 percent of the vote of Spanish-origin voters. In the 1982 primary contest for sheriff, the Hispanic candidates received 85 percent of the vote of Spanish-surnamed voters and 80 percent of the vote of Spanish-origin voters. Only the relatively marginal candidates for Supervisor in Districts 1 and 3 in the 1982 primary received less than majority support from Hispanics. In District 1, the Hispanic candidate received 21 percent of the vote of Spanish-surnamed voters and 19 percent of the vote of Spanish-origin voters. In District 3, the Hispanic candidate received 44 percent of the vote of Spanish-surnamed voters and 41 percent of the vote of Spanish-origin voters. For all six contests, Hispanic candidates garnered a mean vote of 67 percent from Spanish-origin voters.

364. Dr. Lichtman's analysis of partisan elections in Los Angeles County demonstrates strong political cohesion among Hispanics. In the four Democratic Party primary elections he analyzed, Spanish origin voters are estimated to have provided, on average, 85 percent of their vote for Hispanic candidates. His-

panic candidates received an average of 94 percent of the vote of Spanish-origin voters in the eight general elections Dr. Lichtman analyzed.

365. The Court finds that Hispanic political cohesiveness is strong when Hispanic candidates have a realistic chance of winning.

366. For all 19 elections analyzed, the reliability of the findings of polarized voting is corroborated by extremely high values of the squared correlation coefficient (R^2). Whether Spanish-surname or Spanish-origin data are used, in all but five contests, the value of the squared correlation coefficient is at least equal to 0.65. For all 19 elections, moreover, the finding of racial polarization attains a level of statistical significance equal to or greater than the conventional standards used in social science. Researchers generally accept as reliable results for which statistical significance equals or exceeds the conventional standards of either .05 (corresponding to a five in one-hundred probability of obtaining results from chance or random factors) or .01 (corresponding to a one in one-hundred probability). For all 19 elections studied, the statistical significance is better than .00001 (corresponding to one in one-hundred thousand probability of obtaining the results from chance or random factors). The likelihood of obtaining any of these given results under the random factors hypothesis is low and the likelihood of obtaining the consistent pattern of these results is virtually zero.

367. The results of ecological regression analysis are corroborated by the findings of extreme case analysis, a technique that examines the actual vote cast in precincts that are heavily Hispanic or heavily non-Hispanic in their ethnic composition. The results of the extreme case analyses in this case were consistent with, and bolstered the reliability of the results of ecological regression.

368. For all 11 partisan contests studied, the Hispanic candidates received a greater than landslide majority, 60 percent or

more, of the votes actually cast in more than 80 percent Hispanic precincts, whether Spanish-surname or Spanish-origin data are used. In contrast, only in the 1982 general election for state assembly in Assembly District 56 and in the 1986 special run-off and general elections for state assembly in Assembly District 55, did the Hispanic candidate receive more than 50 percent of the votes actually cast in the more than 90 percent non-Hispanic precincts. For the eight nonpartisan elections studied, the Hispanic candidates received a majority of the vote cast in more than 80 percent or more than 90 percent Hispanic precincts in three elections.⁹ In all eleven partisan elections, the Hispanic candidates received a much higher vote in the heavily Hispanic precincts than in the more than 90 percent non-Hispanic precincts.

F. NON-HISPANIC BLOC VOTING

369. Plaintiffs did not present evidence of white bloc voting. For most of their analyses, they combined Anglos, Blacks and Asians into a non-Hispanic bloc. The potential distorting effect of this construct is lessened by the fact that for most of the elections analyzed, the Black and Asian percentage of the electorate was not significant. Moreover, given the demographic reality of the Hispanic Core in Los Angeles County, if 40 percent of the registered voters in a given precinct are Hispanic, the precinct will likely be predominantly Hispanic in its overall population.

370. Where a racial or ethnic group is only a small component of the electorate, its voting behavior would not have a significant effect on the two-group ecological regression estimates of voting behavior.

371. Of the elections analyzed by plaintiffs' experts non-Hispanic voters provided majority support for the Hispanic candidates in only three elections, all partisan general election contests

⁹For some nonpartisan contests, it was possible to use more than 90 percent Hispanic precincts; for others it was possible only to use more than 80 percent Hispanic precincts.

in which party affiliation often influences the behavior of voters (the 1982 general election contests in Senate District 24 and Assembly District 56 and the 1986 general election contest in Assembly District 55). Overall, for all 19 contests studied, the mean crossover vote for Hispanic candidates among non-Spanish-surnamed voters was 27 percent, compared to a bloc vote of 76 percent for non-Hispanic candidates.

372. In the 12 non-partisan or partisan primary elections non-Hispanic voters did not provide a crossover vote of greater than 34 percent for the Hispanic candidates, whether Spanish-surname or Spanish-origin data are used. Overall, for these 12 elections, the mean crossover vote for Hispanic candidates by non-Spanish-surnamed voters is 17 percent.

373. The results of extreme case analysis corroborate the findings of strong bloc voting by non-Hispanics. Of all 19 contests studied, only in the 1982 general election contest for state assembly in Assembly District 56 and in the 1986 special runoff and general election contests for state assembly in Assembly District 55, did Hispanic candidates receive a majority of the vote actually cast in the more than 90 percent non-Hispanic precincts, whether Spanish-surname or Spanish-origin data are used. Considering only the 12 nonpartisan and partisan primary contests, in no instance did Hispanic candidates receive more than 42 percent of the vote cast in the more than 90 percent non-Hispanic precincts. Overall, for these 12 elections, the mean vote for Hispanic candidates in the more than 90 percent non-Hispanic precincts, using Spanish-surname data, is 19 percent.

374. For several of the elections analyzed through ecological regression, extreme case analysis provides especially strong confirmation of the bloc voting results, because a majority or near-majority of non-Hispanic registrants reside in the more than 90 percent non-Hispanic precincts. Dr. Jerome Sacks, an expert for the defendants, testified that if about 35 to 40 percent of a group

reside within "homogeneous" precincts, which he defines as precincts in which the group comprises 90 percent or more of the defined population, then the ecological regression analysis will produce reliable results for that group because the homogeneous precincts anchor the regression line.

375. Specifically, Dr. Sacks testified that in Los Angeles County there are sufficient homogeneous precincts Countywide and in Supervisorial Districts 3 and 5 to have confidence that the regression estimates for non-Hispanics voting behavior are reliable.

376. Dr. Sacks' analysis provided five test cases of the reliability of the regression analysis for non-Hispanics: the 1978 and 1982 primaries for Supervisor in District 3; the 1982 Countywide primary for sheriff, the 1986 Countywide primary for assessor; and the 1988 primary for Supervisor in District 5. For these contests, the following table compares ecological regression and extreme case results for non-Hispanics using Spanish-surname data.

Comparison of Ecological Regression and Extreme Case Analyses Non-Hispanic Registrants, Spanish-Surname Data Nonpartisan Elections Meeting Dr. Sacks Reliability Criteria Percentage of Non-Hispanics Voting for Hispanic Candidates

<u>Election</u>	<u>Ecological Regression</u>	<u>90% + Non-Hispanic Precincts</u>
1978 Primary SD ¹⁰ 3	20	19
1982 Primary Sheriff	21	23
1982 Primary SD 3	5	6
1986 Primary Assessor	10	11
1988 Primary SD 5	1	2

377. These results show an extremely close correspondence between the estimates of non-Hispanic voting for the Hispanic candidate derived by ecological regression and the actual vote for

¹⁰SD = Supervisorial District.

the Hispanic candidate in precincts that are 90 percent or more non-Hispanic. This correspondence holds both for Spanish-surname and Spanish-origin data. In no instance is there a difference of more than two percentage points between the ecological regression results and the results from extreme case analysis. As would be expected from the fact that there are some Hispanics in the more than 90 percent non-Hispanic precincts, the support for the Hispanic candidate in these precincts is generally a point or two higher than the estimate drawn from ecological regression.

378. These results have implications for the estimates of Hispanic as well as non-Hispanic voting. The vote for the Hispanic candidate(s) is simply the sum of the votes cast for that candidate or candidates by non-Hispanic and by Hispanic voters. Thus, if non-Hispanics are *not* voting for the Hispanic candidate, then the votes for the Hispanic candidate must be coming from Hispanic voters. Therefore, the reliable ecological regression estimates of low non-Hispanic support for Hispanic candidates for each of the five elections studied also provides strong confirmation of the reliability of the ecological regression estimates for the Hispanic support for these candidates.

379. The analysis of both partisan and non-partisan elections also suggests that the degree of crossover voting by non-Hispanics for Hispanic candidates may decrease as the Hispanic component of a district decreases. Seven of the eight non-partisan elections were held in districts, or Countywide, with an Hispanic component among their registered voters equal to or less than that of the most heavily Hispanic of existing Supervisorial districts, District 1. For these seven elections, a mean of only 9 percent of voters without a Spanish surname crossed over to support an Hispanic candidate. Of the nonpartisan primary elections, only the election for City Council in District 14 was held in a district with a greater Hispanic component than that of existing Supervisorial District 1. According to 1983 data, 49.9 percent of the registrants in Council District 14 has a Spanish surname. In the

1983 primary in this district, 23 percent of voters without a Spanish surname crossed over to opt for the Hispanic candidates, a percentage that is 2.5 times greater than the mean crossover vote of 9 percent for the remaining seven non-partisan contests.

380. Given the current configuration of the supervisorial districts and the existence of non-Hispanic bloc voting, the Hispanic electorate, though politically cohesive, would not normally have an opportunity to elect a candidate of their choice in even the most Hispanic districts, District 1 and District 3.

381. If the estimated polarization levels are applied to plaintiffs' proposed District 3 of Grofman Plan 1, the election prospects of Hispanics improve substantially.

382. This fact is illustrated by the table below which applies the cohesion and crossover estimates from the three 1982 primary elections in Congressional Districts 30 and 34 and Assembly District 59 to a 50.2 percent Spanish-origin district.

*Projected Vote for Hispanic Candidate
in 50.2 Percent Spanish-Origin District
Based on 1982 Spanish-Origin Primary Results
(Assuming Equal Hispanic and Non-Hispanic Turnout)*

I. CD¹¹ 30 (78% Hispanic Cohesion, 33% Non-Hispanic Crossover)

- | | | |
|---------------------------------------|---|-----------------------|
| 1. Hisp. Vote for Hisp. Candidate | = | .78 × 50.2% = 39.2% |
| 2. Non-Hisp. Vote for Hisp. Candidate | = | .33 × 49.8% = 16.4% |
| 3. Total Vote for Hisp. Candidate | = | 39.2% + 16.4% = 55.6% |

II. CD 34 (88% Hispanic Cohesion, 26% Non-Hispanic Crossover)

- | | | |
|---------------------------------------|---|-----------------------|
| 1. Hisp. Vote for Hisp. Candidate | = | .88 × 48.3% = 42.5% |
| 2. Non-Hisp. Vote for Hisp. Candidate | = | .26 × 51.7% = 13.4% |
| 3. Total Vote for Hisp. Candidate | = | 42.5% + 13.4% = 55.9% |

III. AD 59 (83% Hispanic Cohesion, 29% Non-Hispanic Crossover)

- | | | |
|---------------------------------------|---|-----------------------|
| 1. Hisp. Vote for Hisp. Candidate | = | .83 × 48.3% = 40.1% |
| 2. Non-Hisp. Vote for Hisp. Candidate | = | .29 × 51.7% = 15.0% |
| 3. Total Vote for Hisp. Candidate | = | 40.1% + 15.0% = 55.1% |

¹¹ CD = Congressional District. AD = Assembly District.

383. A similar analysis results in a projected vote of over 50 percent for an Hispanic-preferred candidate in District 3 of Grofman Plan 1 based on available 1982 Spanish-origin statistics (44.0 percent Spanish origin).

384. Under similar analyses, an Hispanic-preferred candidate would be the projected winner in a 44.0 percent Spanish-origin district under either the assumption of equal turnout rate or that of turnout differences between Hispanics and non-Hispanics.

G. OTHER SENATE FACTORS

1. *History of Official Discrimination*

385. The Hispanic community in Los Angeles County has borne the effects of a history of discrimination in the areas of education, housing, employment, and other socioeconomic areas.

386. In Southern California, restrictive real estate covenants have created limited housing opportunities for the Mexican-origin population. Dr. Camarillo testified that the current Hispanic population concentrations correspond to the historical process in which people were not allowed to live, or were restricted to particular areas of the County.

(a) *Repatriation*

387. From 1929 to 1939, in the aftermath of the Depression, some 200,000 to 300,000 Mexican-Americans returned to their "country of origin" as part of a program instituted by the Justice Department. While the program was theoretically voluntary, many legal resident aliens and American citizens of Mexican descent were forced or coerced out of the country.

(b) *Education*

388. In eight of the largest counties in California, in 1923, there were 64 schools with 90-100 percent Mexican-origin children.

School officials required Mexican children to have separate graduation ceremonies from Anglos attending the same school. In one Los Angeles County school where officials were unable to provide separate buildings for the Mexican children, they were assigned to separate classrooms.

389. California maintained segregated schools for Hispanics in Los Angeles until 1947 when the California Supreme Court struck down such segregation. *Westminster School District of Orange County v. Mendez*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947). However, as the United States points out, school desegregation litigation involving districts contained within Los Angeles County continued until 1989.

390. The mean years of school completed by Hispanic voting age citizens in 1980 was only 10.9 years, compared to 13.1 years for white non-Hispanics. The Hispanic mean was lower than that of any other minority group.

391. According to the Census Bureau's Current Population Survey, only 5 percent of Hispanics had completed 16 or more years of school, compared to 29 percent of Anglos.

(c) *Public Facilities*

392. As examples of discrimination against Hispanics in the use of public facilities, Dr. Camarillo testified that it was common during the first decade of this century, for access to public swimming pools to be restricted for Mexican-Americans and blacks, usually to the day before the pool was to be cleaned. In movie theaters, Mexican-Americans could not sit in the center sections.

(d) *Right to Vote*

393. In 1962, California was one of only 19 states which made English language literacy a prerequisite for voting.

394. In 1970, the California Supreme Court held that Article II, Section 1 of the Constitution of California violated the equal protection clause of the Fourteenth Amendment by conditioning the right of persons otherwise qualified to vote upon the ability to read the English language. The court found no compelling state interest in "denying the vote to a group of . . . citizens who already face similar problems of discrimination and exclusion in other areas and need a political voice if they are to have any realistic hope of ameliorating the conditions in which they live." *Castro v. State of California*, 2 Cal. 3d 223, 240 (1970). The court noted that "fear and hatred played a significant role in the passage of the literacy requirement." *Id.* at 25.

395. Pursuant to the 1975 amendments to the Voting Rights Act, the Census Bureau determined that Los Angeles County was covered by the bilingual ballot election requirements of Section 203, 42 U.S.C. §§ 1973aa-1a, because more than five percent of the County's citizens of voting age were persons of Spanish heritage, a protected language minority group under the Voting Rights Act, and that the illiteracy rate of such persons was higher than the national rate.

396. As initially enacted, the provisions of Section 203 were due to expire on August 6, 1985.

397. In 1982, Congress extended the protections of Section 203 until August 6, 1992, but devised a new formula for coverage. This extension applied only to those jurisdictions in which the Census Bureau determined that members of a single language minority do not speak or understand English adequately enough to participate in the electoral process.

398. In 1984, the [sic] pursuant to the 1982 amendments, the Census determined that Los Angeles County was no longer covered by Section 203 of the Act. Although 14.6 percent of the County's voting age citizens were "persons of Spanish heritage"

according to the 1980 Census, the Bureau concluded that fewer than five percent could not speak or understand English adequately enough to participate in the electoral process.

399. On August 7, 1984, the Board of Supervisors voted to discontinue providing election materials in Spanish.

2. Racial Appeals

400. The Garza plaintiffs provided the Court with substantial evidence of racial appeals in elections at all levels within the County.

401. For example, Steven Rodriguez, an Hispanic, ran for Councilman in District 14 of the Los Angeles City Council. When Mr. Rodriguez campaigned in Eagle Rock in 1983, he had doors slammed in his face and had his campaign literature destroyed. During his campaign, Mr. Rodriguez encountered such reaction in excess of 100 times.

402. During his campaigns for United States Congress, Esteban Torres encountered racial appeals by his opponents in the form of statements that Mr. Torres catered only to Hispanics and in the use of his photograph in opponents' campaign literature.

403. In the 1971 runoff for the 49th Assembly District, Richard Alatorre ran against William Brophy. Mr. Brophy distributed mailers which included Mr. Alatorre's photograph and alluded that Alatorre was sympathetic to undocumented aliens.

404. The Court finds that Hispanic residents in Los Angeles County have suffered and continue to suffer from the lingering effects of discrimination.

3. Size of Supervisorial Districts

405. While the population equality statistics for statewide electoral districts in California under the 1980 Census population figures range from 295,849 persons for state assembly districts to 525,953 persons for congressional districts, to 591,698 for state

senate districts, population equality for a Los Angeles County Supervisorial district is 1,495,501 persons or approximately one sixteenth of the 1980 population of the State of California.

406. A Los Angeles County Supervisorial district equal to one-fifth of the County's population is over 2.5 times larger in population than either a congressional or state senatorial district which meet population equality standards and over 5 times as large as a California assembly district which satisfies the equal population standard.

407. The Los Angeles County Supervisorial districts have the largest population of any single-member district for electing a county governing body in the United States.

408. The 1980 population of each Los Angeles County Supervisorial district was larger than the population of 16 states.

409. Los Angeles County encompasses 4,083 square miles. In land area, the County is four times as large as the State of Rhode Island and twice as large as Delaware.

410. The five district structure clearly provides an advantage to incumbents and requires significant financial expenditures to run a successful campaign.

411. Between 1981 and 1986 incumbent Supervisors secured contributions of \$8.2 million.

412. Candidates for the Board of Supervisors must raise more money than candidates for Governor in many states to be a serious challenger.

413. In 1962 and in 1976, the Board submitted the issue of revising the structure of County government to the voters. On both occasions, the voters rejected the proposed change.

414. The Garza plaintiffs contend that the size of the Board of Supervisors has a discriminatory impact upon Hispanic partici-

pation in the political process and that the size of the districts constitute a disfavored voting procedure that denies Hispanics equal access to the electoral process.

415. Supervisor Hahn testified that it was difficult for one Supervisor to represent more than a million people.

416. The Court finds that the enormous size and population of each supervisorial district and the fragmentation of the Hispanic population core under the 1981 redistricting plan have impeded the ability of Hispanic persons to participate in the political process, deterred viable Hispanic candidates from running for the Board, and impaired the ability of Hispanics to elect Supervisors of their choice.

To the extent that the preceding Findings of Fact may be deemed to be Conclusions of Law, they are hereby incorporated by reference into the Conclusions of Law.

III. CONCLUSIONS OF LAW

A. JURISDICTION

1. The Court has jurisdiction over this voting rights litigation pursuant to 42 U.S.C. § 1973 and 28 U.S.C. §§ 1331, 1343(3) & (4). Venue is proper in the Central District of California pursuant to 28 U.S.C. § 1391(b).

B. THE VOTING RIGHTS ACT

2. Section 2 of the Voting Rights Act, 42 U.S.C. 1973, as amended, 96 Stat. 134, provides that:

(a) No voting qualifications or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right . . . to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other political members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the state or political subdivision is [but] one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

3. Section 4(f)(2) of the Act provides

No voting qualification or prerequisite to voting, or standard, practice or procedure shall be imposed or applied by any State or political subdivision . . . to deny or abridge the right of any citizen of the United States to vote because he is a member of a *language minority group*.¹² (emphasis added)

1. *The Senate Factors*

4. The Senate Judiciary Committee majority report accompanying the bill that amended § 2, elaborates on the circumstances that might be probative of a § 2 violation, noting the following "typical factors" (hereinafter "Senate Factors"):

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

2. The extent to which voting in the elections of the state or political subdivision is racially polarized;

¹²The term language minorities or language minority group means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage. 42 U.S.C. § 19731(c)(3).

3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. Whether political campaigns have been characterized by overt or subtle racial appeals.

7. The extent to which members of the minority group have been elected to public office in the jurisdiction.

5. Additional factors considered probative of a violation included:

Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

S.Rep.No. 97-417, 97th Cong.2d Sess. 28, 29 (1982), U.S. Code Cong. & Admin. News 1982, pp. 206-207 (hereinafter S. Rep.).

6. The impact of the contested structure or practice on minority electoral opportunities must be assessed based on "objective" factors which include but are not limited to the Senate Factors enumerated above. The Senate Committee noted in its report that there is no requirement that any particular number of factors be proved, or that a majority of them point one way or another. S.Rep. at 29, U.S. Code Cong. & Admin. News 1982, p. 207.

7. The Senate Committee set forth a flexible, fact-intensive test for determining § 2 violations. "The question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality' " and on a "functional" view of the political process. *Gingles*, 478 U.S. at 45 citing S.Rep. at 30, n.120, U.S. Code Cong. & Admin. News 1982, p. 208. As *Gingles* explained, "the essence of a § 2 claim is that a certain electoral law, practice or structure interacts with social or historical conditions to cause an inequality in opportunities enjoyed by black and white voters to elect their preferred representatives." *Id.* at 47. Rights afforded under Section 2 apply equally to Hispanics. *Gomez v. City of Watsonville*, 863 F.2d 1407 (9th Cir. 1988), *cert. denied*, U.S. , 109 S. Ct. 1534 (1989). The conclusion as to whether Hispanics have an equal opportunity to participate in the political process and to elect candidates of their choice is "peculiarly dependent upon the facts of each case." *Id.* at 79.

8. The circumstances under which § 2 violations may be proved is limited in three ways:

First, electoral devices, such as at large elections, may not be considered *per se* violative of Section 2. Plaintiffs have the burden of demonstrating that, under the totality of the circumstances, the devices result in unequal access to the electoral process.

Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation does not establish a violation.

Third, the results test does not assume the existence of racial bloc voting; plaintiffs must prove it.

Gingles, 478 U.S. at 46, quoting S.Rep. at 33.

9. The Supreme Court in *Gingles*, 478 U.S. at 46, addressed a claim that multimember districts diluted black voting strength. Plaintiffs alleged and attempted to prove that their ability to elect

the representatives of their choice was impaired by the selection of a multimember electoral structure. *Id.* at 46 n.12. The Supreme Court stated that it had no occasion to consider what standards should pertain to a claim brought by a minority group that is not sufficiently large and compact to constitute a majority in a single-member district, alleging that the use of a multimember district impairs its ability to *influence* elections. *Id.* (emphasis in the original).

10. The Court also stated that it had no occasion to consider whether the standards applied in *Gingles* are fully pertinent to other sorts of vote dilution claims, such as claims alleging that the splitting of a large and geographically cohesive minority between two or more multimember or single-member districts resulted in the dilution of the minority vote. *Id.* at n.12.

11. While many or all of the Senate Factors may be relevant to a plaintiff's § 2 claim, "unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice." *Id.* at 48. Specifically, the Court outlines three preconditions for multimember districts to operate to impair minority voters' ability to elect representatives of their choice:

First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single member district. (hereinafter "geographical compactness")

Second, the minority group must be able to show that it is politically cohesive. (hereinafter "political cohesiveness")

Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances such as the minority candidate running unopposed, usually to defeat the minority's preferred candidate. (hereinafter "racial bloc voting")

Id. at 51. "[T]he bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group." *Id.* at 49 (emphasis in original)

(a) *Geographic Compactness*

12. Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by the structure or practice. *Id.* at 50 n.17 (emphasis in original). For this reason, the Supreme Court determined that a showing of geographic compactness is a threshold matter. *Id.*

13. Justice O'Connor, in a concurring opinion joined by Chief Justice Burger, Justice Powell, and Justice Rehnquist, preferred to leave open the broader question of whether § 2 *requires* a showing of maximum feasible minority voting strength:

In my view, we should refrain from deciding in this case whether a court must invariably posit as its measure of "undiluted" minority voting strength single-member districts in which minority group members constitute a majority. There is substantial doubt that Congress intended "undiluted minority voting strength" to mean "maximum feasible minority voting strength." Even if that is the appropriate definition in some circumstances, there is no indication that Congress intended to mandate a single, universally applicable standard for measuring undiluted minority voting strength, regardless of local conditions and regardless of the extent of past discrimination against minority voters in a particular State or political subdivision.

Gingles, 478 U.S. at 94-95 (O'Connor, J., concurring).

(1) *Voting Age Population*

14. The eligible minority voter population, rather than the total population is the appropriate measure of geographical compactness. *Romero*, 883 F.2d at 1426; *Gomez*, 863 F.2d at 1414; *Skorepa v. City of Chula Vista*, 723 F. Supp. 1384, 1386 (S.D. Cal. 1989).

(2) *Current Population Data*

15. Current voting age population data are probative because they indicate the electoral potential of the minority community. *City of Rome v. United States*, 446 U.S. 156, 186 n.22 (1980). See, e.g., *Gingles*, 478 U.S. at 80 (results of elections for years 1978, 1980 and 1982 examined to determine if racially polarized voting existed); *Gomez*, 863 F.2d at 1409-10 & n.1 (election results from 1971 through 1987 considered); *Smith v. Clinton*, 687 F. Supp. 1310, 1315-16 (E.D. Ark.) (three-judge court), *aff'd*, U.S. , 109 S. Ct. 548 (1988) (election results analyzed include 1982, 1985, 1986 and 1988 contests).

16. The census is presumed to be accurate unless proven otherwise. *Latino Political Action Committee v. City of Boston*, 568 F. Supp. 1012, 1018 (D. Mass. 1983), *aff'd*, 784 F.2d 409 (1st Cir. 1986). The evidence disproving the census must be clear, cogent and convincing. *Dixon v. Hassler*, 412 F. Supp. 1036, 1040 (W.D. Tenn. 1976) (three judge panel), *aff'd sub nom. Republican Party v. Dixon*, 429 U.S. 934 (1976) (applying standard that decennial census will be controlling unless there is 'clear, cogent and convincing evidence' that such figures are no longer valid and that other figures are valid).

17. In order to overcome the presumption in favor of the 1980 census data, plaintiffs need not demonstrate that the census was inaccurate.

18. It is sufficient to conclude that there has been significant demographic changes since the decennial census and that there exists post-decennial population data that more accurately reflects evidence of the current demographic conditions. *Kirkpatrick v. Preisler*, 394 U.S. 526, 535 (1969); cf. *Gaffney v. Cummings*, 412 U.S. 735, 746 (1973) (describing federal census as "more of an event than a process" measuring population "at only a single instant in time").

(3) *Estimates and Projections*

19. Where shifts in population can be predicted with a high degree of accuracy, such "predictions" may be considered by states that are redistricting. *Kirkpatrick*, 394 U.S. at 534. These findings as to population trends must be thoroughly documented and applied throughout the state in a systematic manner. *Id.* but *Cf. McNeil*, 851 F.2d 937, 947 (7th Cir. 1988), *cert. denied*, U.S. , 109 S. Ct. 1769 (1989) (refusing to override presumption in favor of census based on meager evidence and noting that estimates based on past trends are generally not sufficient to override "hard" decennial census data); *Graves v. Barnes*, 446 F. Supp. 560, 568 (W.D. Texas 1977), *aff'd sub nom. Briscoe v. Escalante*, 435 U.S. 901 (1978) (study's projections did not offer high degree of accuracy required to supplant population figures of prior decennial census).

(b) *Political Cohesiveness*

20. The inquiry whether a minority group is politically cohesive is not to be made prior to and apart from a study of polarized voting because the central focus is upon voting patterns. *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988), *cert. denied*, U.S. , 109 S. Ct. 3213 (1989). If a minority group votes together it can be deemed politically cohesive. *Id.*

21. In determining political cohesiveness, the inquiry is essentially whether the minority group has expressed clear political preferences that are distinct from those of the majority. *Gomez*, 863 F.2d at 1415. Therefore, as the Court noted in *Gingles*, one way to demonstrate cohesiveness is by showing that a significant number of minority group members usually vote for the same candidates. *Gingles*, 478 U.S. at 56.

22. In *Gomez*, the Ninth Circuit reversed the district court for applying an incorrect legal standard. The district court had determined that, "with respect to those Hispanics who have actually

voted, the evidence favored a finding of political cohesiveness." *Id.* at 1416 (emphasis in original). The court concluded, however, that because "no significant number of eligible Hispanics have voted in the elections under consideration," the Hispanic community as a whole was too apathetic to be politically cohesive. *Id.*

23. Political cohesiveness is to be judged primarily on the basis of the voting preferences expressed in actual elections. *Gomez*, 863 F.2d at 1416. "The district court erred by focusing on low minority voter registration and turnout as evidence that the minority community was not politically cohesive. The court should have looked only to *actual voting patterns* rather than speculating as to the reasons why many Hispanics were apathetic." *Id.*

24. Socioeconomic disparities and differences of political opinion within the Hispanic community are "only relevant to the extent that they reflect differences in voting behavior among Hispanics." *Id.*

25. Statistical analysis of voting data is highly relevant to the issue of political cohesion. *Sanchez v. Bond*, 875 F.2d 1488, 1493 (10th Cir. 1989).

(1) *Ecological Regression Analysis*

26. Political cohesion may be established through ecological regression analysis and lay witness testimony. *Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547, 1558 (11th Cir. 1987), *cert. denied*, U.S. , 485 U.S. 936 (1988). As the Ninth Circuit stated in *Romero*, 883 F.2d at 1423, "Both before and after *Thornburg*, plaintiffs, including plaintiffs in this case, utilized exit polls, ecological regression and homogeneous precinct analysis to show the existence of polarized voting."

27. Bivariate ecological regression analysis has been frequently employed in Section 2 cases after *Gingles*. See, e.g., *Campos*, 840 F.2d at 1246-48; *Citizens for a Better Gretna v. Gretna*, 834 F.2d 496, 500-02 (5th Cir. 1987).

28. Crucial to the validity of regression analysis are the values for "R" and "R2", which measure the strength of the correlation and linear relationship of the variables being examined. *Overton v. Austin*, 871 F.2d 529, 539 (5th Cir. 1984) (stating that "R2" value expresses the percentage of variance in the vote that is explained by the race of the voters).

(c) *Racial Bloc Voting*

29. "The number of elections that must be studied in order to determine whether voting is polarized will vary according to pertinent circumstances. One important circumstance is the number of elections in which the minority group has sponsored candidates." *Campos*, 840 F.2d at 1245 (finding district court warranted in its focus on those races that had a minority member as a candidate).

30. If a small number of minority candidacies prevents the compilation of statistical evidence, a court should not deny relief, but should rely on other totality of circumstances factors to determine if the electoral system had a discriminatory effect. *See Solomon v. Liberty County*, 865 F.2d 1566, 1577-78 (11th Cir. 1988) (holding that plaintiffs should be able to buttress their claims of white bloc voting by pointing to racial voting patterns in elections for offices they do not challenge in their section 2 suit and that district court erred in ignoring regression analyses considered probative of black political cohesiveness).

31. In a plurality portion of the *Gingles* opinion, the Court stated that "[u]nder § 2, it is the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important." *Gingles*, 478 U.S. at 68. The race of the voter, not of the candidate is relevant to vote dilution analysis. *Id.* However, the Court also recognized that since both minority and majority voters often select members of their own race as their preferred representatives, "it will frequently be the case that a black candidate is the choice of blacks, while a white candidate is the choice of whites." *Id.*

32. The Fifth Circuit interpreted *Gingles* to hold that the race of the candidate is in general of less significance than the race of the voter—but only within the context of an election that offers voters the choice of supporting a viable minority candidate. *Better Gretna*, 834 F.2d at 503 (emphasis added).

33. The legal concept of racially polarized voting, as it relates to claims of vote dilution, refers only to the existence of a correlation between the race of the voters and the selection of certain candidates. *Id.* at 74.

34. In order to prove a prima facie case of racial bloc voting, plaintiffs need not prove causation or intent. *Id.*

35. A definition or [sic] racially polarized voting which holds that racial bloc voting does not exist when voters of a certain race's choice of a certain candidate is most strongly influenced by the fact that the voters have low income and menial jobs—"when the reason most of those voters have menial jobs and low incomes is attributable to past or present racial discrimination—runs counter to the Senate Report's instruction to conduct a searching and practical evaluation of past and present reality." *Id.* at 65 citing S.Rep at 30. Such an approach, according to the Supreme Court, would interfere with the purpose of the Voting Rights Act to eliminate the negative effects of past discrimination on the electoral opportunities of minorities. *Id.*

36. The fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting. *Gingles*, 478 U.S. at 51.

(d) *History of Discrimination*

37. Congress intended that the Voting Rights Act eradicate inequalities in political opportunities that exist due to the vestigial effects of past purposeful discrimination. *Gingles*, 478 U.S. at 69.

In *Solomon*, 865 F.2d at 1579, the Eleventh Circuit found that the trial court erred by failing to consider past and present reality as required by *Gingles* and by refusing to give any weight to the legislature's reason—to discriminate against blacks—for prescribing the at-large system as the method of electing school board members in Florida.

38. Courts have historically recognized that political participation by minorities tends to be depressed where minority groups suffer effects of prior discrimination such as inferior education, poor employment opportunities and low incomes. *Gingles*, 478 U.S. at 69; see, e.g., *White v. Register*, 412 U.S. at 768-69 (holding that district court's order requiring disestablishment of multimembers districts in certain Texas counties was warranted in light of history of political discrimination against blacks and Mexican-Americans residing in those counties and the residual effects of such discrimination on those groups); *Kirksey v. Board of Supervisors of Hinds County*, 554 F.2d 139, 145-46 (5th Cir.) (en banc) cert. denied 434 U.S. 968 (1977) (finding that Supervisors' reapportionment plan, though racially neutral, would perpetuate the denial of black minority access to the democratic process).

39. In *Kirksey*, 554 F.2d at 151, the Fifth Circuit, in reversing the district court's reapportionment plan, concluded that plaintiffs had proved a long history of denial of access to the democratic process and that the structure and residual effects of the past had not been removed and replaced by current access. "By fragmenting a geographically concentrated but substantial black minority in a community where bloc voting has been a way of political life the plan [though racially neutral] will cancel or minimize the voting strength of the black minority and will tend to submerge the interests of the black community." *Id.* The court concluded that the plan denies rights protected by the Fourteenth and Fifteenth Amendments.

(e) *er Discriminatory Voting Practices*

40. A section 2 claim is enhanced by a showing of the existence of large districts, majority voting requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographic subdistricts. *Zimmer v. McKeithen*, 485 F.2d 1297, 1305 (5th Cir. 1973) (en banc), *aff'd sub nom. East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976).

(f) *Size of Supervisorial Districts*

41. Unusually large election districts is a factor typically relevant to a Section 2 claim. *Gingles*, 478 U.S. at 45.

(g) *Candidate Slating Process*

42. A slating process is a procedure by which a political group determines what candidate they will sponsor for particular offices. The resulting candidacies comprise that group's "slate." *Solomon*, 865 F.2d at 1581 n.31 (finding that on remand district court should consider whether white slating process is open to black candidates who seek to represent black interests). Slating could thus operate to control effective access of minorities to the ballot. *Overton*, 871 F.2d at 534.

(h) *Lingering Effects of Past Discrimination*

43. The lingering effects of past discrimination are relevant only if they continue to "hinder [the minority group's] ability to participate effectively in the political process." S. Rep. at 29, U.S. Code Cong. & Admin. News 1982, p. 206.

(i) *Election of Minorities*

44. Minority electoral failure is one of the two most probative indications of vote dilution. *Solomon*, 865, F.2d at 1583 citing *Gingles*, 478 U.S. at 48 n.15.

C. DISCRIMINATORY RESULTS V. INTENT

45. In *Mobile v. Bolden*, 446 U.S. 55, 66 (1980), the Supreme Court determined that minority voters, to establish that their votes have been diluted in violation of section 2 of the Voting Rights Act (hereinafter "the Act"), as well as violation of the Fourteenth and Fifteenth Amendments to the Constitution, must prove that the contested electoral practice was adopted or maintained by the governmental officials for a discriminatory purpose.

46. In 1982, section 2 of the Act was amended to add a "results" test to the intent test. As the Supreme Court stated in *Gingles*, 478 U.S. at 43, the intent test was repudiated because it asked the wrong question. The "right" question is whether "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." S.Rep. at 28, U.S. Code Cong. & Admin. News 1982, p.206. The Report of the Senate Committee states in pertinent part:

The subsection [new subsection 2(a)] expresses the intent of Congress in amending Section 2 that plaintiffs do not need to prove discriminatory purpose or motive, by either direct or indirect evidence, in order to establish a violation. With this clarification, Section 2 explicitly codifies a standard different from the interpretation of the former language of Section 2 contained in the Supreme Court's *Mobile* plurality opinion, i.e. the interpretation that the former language of Section 2 prohibits only purposeful discrimination.

Under Section 2, as amended plaintiffs would continue to have the option of establishing a Section 2 violation by proving a discriminatory purpose behind the challenged practice or method. However, if plaintiff chose to establish a violation under the alternative basis now codified in the statute as the "results standard, then proof of the purpose behind the challenged practice is neither required or relevant. . . . The courts are to look at the totality of the circumstances in order to determine whether the result of the challenged practice is that the political processes are equally

open; that is, whether, members of a protected class have the same opportunity as others to participate in the electoral process and to elect candidates of their choice. The courts are to conduct this analysis on the basis of a variety of objective factors concerning the impact of the challenged practice and the social and political context in which it occurs.

The motivation behind the challenged practice or method is not relevant to the determination. The [Senate] Committee expressly disavows any characterization of the results test codified in this statute as including an intent requirement, whether or not such a requirement might be met in a particular case by inferences drawn from the same objective factors offered to establish a discriminatory result.

Nor is there any need to establish a purposeful design through inferences from the foreseeable consequences of adopting or maintaining the challenged practice.

S.Rep. at 4, U.S. Code Cong. & Admin. News 1965, p. 245-46. The Court finds that the claims that a challenged electoral system or practice violates Section 2 due to a discriminatory purpose may be determined independently of any analysis of the preconditions set forth in *Gingles*. See *Brown v. Board of Commissioners of City of Chattanooga*, 722 F. Supp. 380, 383 (E.D. Tenn. 1989) (stating that in adding the "results" test to Section 2 of the Voting Rights Act, Congress left the "intent" test intact); cf. *Overton*, 871 F.2d at 540-41 (explaining that the factors pertinent to a determination of discriminatory intent of a regulation that continues to have disparate racial impact include the historical background of the regulation, specific sequence of events leading up to the regulation, departures from the normal procedural sequence, substantive departures, and legislative history, especially where there are contemporary statements by members of the decision-making body).

47. The standard of proof required for determining intent or discriminatory purpose is the same as that used in resolving cases under the Fourteenth Amendment's Equal Protection Clause.

Rogers v. Lodge, 458 U.S. 613, 617 (1982); *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265 (1977).

48. Discriminatory purpose may be inferred from the totality of the relevant facts, including the fact that the law bears more heavily on one race than another. *Washington v. Davis*, 426 U.S. 229, 240 (1976).

49. Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. *Id.* at 242.

50. Courts traditionally refrain from reviewing the merits of the decisions of legislators and administrators on the grounds that these officials are properly concerned with balancing numerous competing considerations. However, racial discrimination is not just another competing consideration. *Arlington Heights*, 429 U.S. at 265. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified. *Id.*

51. Historical evidence is relevant to a determination of discriminatory purpose. *Rogers*, 458 U.S. at 625. See *Brown*, 722 F. Supp. at 385 (finding history of Chattanooga's city government and the black franchise "particularly revealing").

52. Factors that may be probative of a discriminatory purpose include: (1) impact of the official action; (2) historical background of the decision, "particularly if it reveals a series of official actions taken for invidious purposes"; (3) specific sequence of events leading up to the challenged decision; (4) departures from normal procedural sequences; (5) substantive departures . . . "particularly if the factors usually considered important by the decision maker strongly favor a decision contrary to the one reached." *Arlington Heights*, 429 U.S. at 266-67.

53. In *Rybicki v. State Board of Elections*, 574 F. Supp. 1082, 1109 (N.D. Ill. 1982), the court found that where the requirements of incumbency "were so closely intertwined with the need for racial dilution that an intent to maintain a safe, primarily white, district for Senator Joyce is virtually coterminous with a purpose to practice racial discrimination," is indicative of an intent to discriminate.

D. INTER-DECENNIAL REDISTRICTING

54. The California Election Code states in pertinent part:

At any time between the decennial adjustments of district boundaries, the board may cause a census of the County to be taken as provided in Section 26203 of the Government Code, and may adjust the boundaries of the Supervisorial districts on the basis of that census, or on the basis of population estimates prepared by the State Department of Finance or the County planning department or planning commission, pursuant to section 35000.

Cal. Elec. Code § 35003, added by Stats. 1979, c. 546, p. 1747, § 1. Pursuant to California Election Code § 35003 (West 1989), the County is authorized to conduct inter-decennial apportionments.

E. TOTAL POPULATION AS APPORTIONMENT BASE

55. The law of the State of California requires that the Board of Supervisors redistrict using total population figures validated by the California Department of Finance. California Election Code § 35000 states in pertinent part:

Following each decennial federal census, and using population figures as validated by the Population Research Unit of the Department of Finance as a basis, the board shall adjust the boundaries of any or all of the Supervisorial districts of the County so that the districts shall be as nearly equal in population as may be.

Cal. Elec. Code § 35000.

56. Neither the Constitution of the State of California nor the United States Constitution requires the use of citizens or citizens of voting age as the apportionment base. *Burns v. Richardson*, 384 U.S. 73, 92 (1966). Nor are states required to include "aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime, in the apportionment base by which their legislators are distributed and against which compliance with the Equal Protection Clause is to be measured." *Id.* at 92. As the Supreme Court explained, this decision on which groups to include or exclude "involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere." *Id.*

57. In *Burns*, the Supreme Court found fault with the use of a registered voter or actual voter base since such a basis depends upon the extent of political activity of those eligible to register and vote as well as upon criteria governing state citizenship. *Id.* "Each is susceptible to improper influences by which those in political power might be able to perpetuate underrepresentation of groups constitutionally entitled to participate in the electoral process, or perpetuate a "ghost of prior malapportionment." *Id.* at 92-93 quoting *Buckley v. Hoff*, 243 F. Supp. 873 876 (D.C. Vt. 1965).

F. ONE PERSON ONE VOTE RULE

58. The overriding objective of a legislative apportionment scheme must be "substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State." *Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

59. The right of American citizens to participate fully and effectively in the political processes of state legislative bodies applies equally to County bodies. See *Avery v. Midland County*, 390 U.S. 474, 480 (1968) (finding that city, town, or County may no

more deny equal protection than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law).

60. While an alternative election system must comport with the one person one vote standard, it need not achieve absolute equality. *Reynolds*, 377 U.S. at 578. The Supreme Court has acknowledged that some leeway in the equal protection requirement should be afforded states in devising their legislative apportionment plans. A maximum deviation from population equality of less than ten percent is permissible under the equal protection clause for purposes of apportioning state and local governing bodies. See, e.g., *Brown v. Thompson*, 462 U.S. 835, 852 (1983) (stating that deviations below ten percent are ordinarily considered *de minimis*); *Connor v. Finch*, 431 U.S. 407, 418 (1977) (noting that under-10 percent deviations are considered to be of prima facie constitutional validity in context of legislatively enacted apportionments); see also *White*, 412 U.S. at 765 (permitting variance of 9.9 percent); *Gaffney*, 412 U.S. at 745 (permitting deviation of 7.83 percent with no showing of invidious discrimination).

61. The burden is on the district court to "elucidate the reasons necessitating any departure from the goal of population equality, and to articulate clearly the relationship between the variance and the state policy furthered." *Chapman v. Meier*, 420 U.S. 1, 24 (finding that 20 percent variance in plan formulated by federal court is constitutionally impermissible absent significant state policies or other acceptable considerations that require adoption of a plan with so great a variance).

G. REAPPORTIONMENT

62. The task of reapportionment is properly a legislative function. Whenever practicable, the legislature should be afforded a reasonable opportunity to meet constitutional requirements by

adopting a substitute measure rather than for the federal court to devise and order into effect its own plan. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). The County may also provide to this Court an appropriate schedule for the prompt implementation of the plan following the Court's review.

63. Should the County be unable or unwilling to devise and present a fair election plan to this Court, the Court will undertake the "unwelcome obligation" of ordering into effect a plan of its own design. *Connor*, 431 U.S. at 415.

To the extent that the preceding Conclusions of Law may be deemed to be Findings of Fact, they are hereby incorporated by reference into the Findings of Fact.

IT IS SO ORDERED.

DATED: _____

David V. Kenyon
United States District Judge

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LODGED

AUG 6 1990

FILED

AUG 6 1990

CLERK U.S. DISTRICT
COURT
CENTRAL DISTRICT OF
CALIFORNIA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

YOLANDA GARZA, *et al.*,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff,

LAWRENCE K. IRVIN, *et al.*,
Plaintiff-Intervenors.

v.

COUNTY OF LOS ANGELES,
et al.,
Defendants.

No. CV 88-5143 KN (Ex)

No. CV 88-5435 KN (Ex)

PROPOSED FINDINGS
AND ORDER
REGARDING
REMEDIAL
REDISTRICTING PLAN
AND ELECTION
SCHEDULE

On June 4, 1990, this Court issued Findings of Fact and Conclusions of Law holding that the 1981 redistricting plan for the Los Angeles County Board of Supervisors violates Section 2 of the Voting Rights Act of 1965 as amended, 42 U.S.C. 1973 ("Section 2"), and the Fourteenth Amendment of the Constitution. After affording defendants a reasonable opportunity to propose a remedial redistricting plan and holding an evidentiary hearing on the validity of the proposed remedial plan, this Court found that the plan failed to satisfy the requirements of Section 2. Findings of Fact and Conclusions of Law Re: Proposed Remedial Plan Submitted by County of Los Angeles, filed August 3, 1990.

The Court held an evidentiary hearing concerning the device of a court-ordered redistricting plan, at which Dr. Bernard Grofman and Dr. Leobardo Estrada, expert witnesses retained by the United States and *Garza* plaintiffs, respectively, testified about alternative plans. Following that hearing, the Court heard testimony concerning the feasibility of implementing an alternative plan at the November 6, 1990 election.

On August 3, 1990, after considering the entire record and the arguments of the parties regarding possible alternative plans and the implementation of such a plan, the Court directed the plaintiffs to prepare and lodge a proposed order that among other things, adopts *Garza* Plan 1 as the court-ordered plan and calls for a special primary election in District 1 on November 6, 1990.

The Court makes the following findings regarding the choice of a remedial plan and the schedule for implementing the remedial plan:

I. *GARZA PLAN 1 MODIFIED*

1. Pursuant to this Court's order of August 3, 1990, Dr. Estrada has filed a declaration submitting, for acceptance by this Court, a description of *Garza* Plan 1, which includes the "minor

revisions required to include all parts of particular cities," except the City of Los Angeles, entirely within one supervisorial district. Having reviewed the plan as modified, the Court finds that the plan satisfies the requirements of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth Amendment and hereby adopts *Garza Plan 1* as modified as the court-ordered plan.

2. *Garza Plan 1 Modified* is based upon an illustrative plan developed by Dr. Bernard Grofman, an expert called by the United States, and initially presented during the liability phase of this litigation. Dr. Grofman testified at the remedial stage that *Garza Plan 1*, along with two alternatives that he had constructed, would provide Hispanics with an opportunity equal to other members of the electorate to participate in the political process and to elect supervisors of their choice without diluting the voting strength of the County's black citizens.

3. The 1990 total population characteristics for *Garza Plan 1 Modified*, according to 1990 PEPS data, are as follows:

District	Total	White	Black	Hispanic	Other
1	1,779,835	12.4	2.1	71.2	14.3
2	1,775,665	15.0	38.6	35.3	11.1
3	1,768,124	60.9	3.9	25.5	9.7
4	1,776,240	53.9	4.3	26.6	15.2
5	1,780,244	57.1	5.9	24.3	12.6
TOTAL	8,880,109	39.8	11.0	36.6	12.6

4. *Garza Plan 1 Modified* has an overall total population deviation of sixty-eight hundredths of one percent (0.68%) as measured by 1990 PEPS data.

5. Using the estimates of voting age citizen population for 1990 developed by Dr. Leobardo Estrada, *Garza Plan 1 Modified* has the following characteristics:

District	Total	White	Black	Hispanic	Other
1	707,651	25.4	3.5	59.4	11.6
2	922,180	23.8	50.8	17.1	8.3
3	1,098,663	77.0	4.3	13.9	4.7
4	1,081,089	67.5	4.4	19.7	8.4
5	1,088,388	69.8	6.2	18.1	5.9
TOTAL	4,897,971	55.8	13.4	23.3	7.5

6. Using 1990 voter registration, *Garza Plan 1 Modified* has the following characteristics:

<u>District</u>	<u>Total</u>	<u>Spanish Surname</u>	<u>Spanish Origin</u>
1	366,145	50.6	52.8
2	611,293	7.9	9.1
3	784,773	7.3	8.3
4	800,893	12.0	12.9
5	835,408	10.5	11.5
TOTAL	3,398,512	14.0	15.1

7. *Garza Plan 1 Modified* unites the Hispanic Core into Supervisorial District 1 and remedies the fragmentation of the Hispanic Core occasioned by the 1981 redistricting plan and prior redistricting plans.

8. *Garza Plan 1 Modified* preserves the integrity of the growing Hispanic community in the San Fernando Valley.

9. *Garza Plan 1 Modified* creates a single-member district (District 1) in which Hispanic voting age citizens make up a majority of the voting age citizen population and in which Hispanic registered voters make up a majority of the registered voters.

10. *Garza Plan 1 Modified* maintains the naturally-occurring open seat that falls within the majority-Hispanic District 1. The incumbent supervisors, other than Supervisor Schabarum who did not file for reelection, are retained in their existing districts. The plan is consistent with the provisions of the Los Angeles County Charter as interpreted by defendants to require that "the four incumbents' residences are located in the district that they represent." Defendants' Memorandum of Points and Authorities In Support of the County's Remedial Redistricting Plan, at 14 (emphasis added).

11. *Garza Plan 1 Modified* does not split any cities other than the City of Los Angeles, which must be split because of its size.

12. *Garza* Plan 1 Modified creates a district in which Hispanic citizens will have a realistic opportunity to elect a candidate of choice to the Los Angeles County Board of Supervisors. The plan fully remedies the violations found by this Court and provides Hispanic citizens an equal opportunity to participate in the political process and to elect a supervisor of their choice.

13. In addition, *Garza* Plan 1 Modified does not diminish the voting strength of the County's black citizens. Using 1990 data, blacks are estimated to comprise 50.8 percent of the voting age citizens in District 2 of the plan compared to 46.7 percent in District 2 of the 1981 plan. That result is achieved, in part, by transferring the entire City of Compton from District 4 to District 2 and by providing that the cities of Beverly Hills and West Hollywood remain in District 5.

II. SPECIAL ELECTION IN DISTRICT 1

14. The United States and the *Garza* plaintiffs seek to have the Court order a special primary election on November 6, 1990 in the Hispanic majority district of the court-ordered plan. Defendant Supervisors Edelman and Hahn also joined in the request that a remedial election be held promptly. The other defendants urge the court to allow the general election in District 1 of the 1981 plan to proceed as scheduled.

15. The Court finds that special election relief is appropriate under the circumstances of this case. The Court has found that there has been a serious, substantial and longstanding violation of the voting rights of Hispanic citizens in Los Angeles County; that the violation has affected the outcome of elections to the board of supervisors; and that the plaintiffs have exercised due diligence in seeking relief in advance of the 1990 elections.

16. The Court also finds that it is feasible to conduct a special primary election for Supervisor in District 1 on November 6,

1990, and that doing so would not jeopardize the integrity of the general election to be held throughout Los Angeles County on November 6, 1990.

17. The Court finds it is unnecessary to alter the result of the June 5, 1990 election of Supervisor Edelman in District 3 in order to provide an effective remedy.

18. Defendant Charles Weissburd is the Registrar-Recorder of the County of Los Angeles. He testified that for administrative reasons his office has set August 15, 1990 as the target date for having the computer files reflect the boundaries of all election districts, including supervisorial districts. Specifically, the computer file would show the election districts for each of the county's over 11,000 established precincts.

19. Mr. Weissburd testified that to have a new supervisorial redistricting plan *based upon census tract data* in place by August 15 he would have had to receive the new plan by July 20 to provide four weekends—eight working days—to input in the system the new supervisorial redistricting plan. A substantial component of that work would involve translating the census tract data into the established precinct data and making the necessary assignments of voters.

20. Mr. Weissburd, however, also testified that if the new supervisorial election districts were drawn based upon existing precinct lines, they would be easier to implement. New precincts would not need to be created and voters would not have to be transferred from one precinct to another. In addition, the Registrar-Recorder has the computer capability of directly implementing a new redistricting plan based upon established precinct assignments.

21. David Ely, a research analyst with Pactech Data and Research, Inc., was retained by the plaintiff United States to help

create certain computer databases for this litigation. These databases made extensive use of election and registered voter files from the Registrar-Recorder's office, and were relied upon by both plaintiffs' and defendants' experts during the liability phase of this litigation. In addition, Mr. Ely utilized the files of the Registrar-Recorder in his work on verifying and finalizing the redistricting plans passed by the Los Angeles City Council in 1986 to resolve similar voting rights litigation.

22. Mr. Ely testified that he has developed a methodology for describing a supervisorial redistricting plan by using established precincts rather than census tracts, as well as a system for verifying the accuracy of the established precinct assignments. Mr. Ely has applied the methodology and the verification system to *Garza Plan 1 Modified* and produced a description of the plan based upon the established precincts existing at the time of the June 5, 1990 primary election.

23. The Court finds that Mr. Ely's methodology yields an accurate and reliable description of *Garza Plan 1 Modified* and will order the plan into effect based upon his established precinct assignments. As a result, the task of the Registrar-Recorder is greatly reduced and simplified because there will be no need to start with census tract data and convert that data to established precinct data. Nor is there a need to modify established precincts or to reassign voters from one established precinct to another. Any established precincts that have been changed since the June primary can be assigned to the new plan based upon the Registrar-Recorder's records of established precinct changes.

24. As a practical matter, the assignment of established precincts is needed first and foremost for District 1 for an election to be held on November 6, 1990. Mr. Weissburd did not identify any reason why the assignment of precincts in the remaining supervisorial districts would have any bearing on the conduct of the November 6th election.

25. The Court finds that the Registrar-Recorder can make the necessary assignments for the boundaries of the court-ordered plan in the computer files by the August 15th target date.

26. The Court further notes that defendants have failed to demonstrate that the Registrar-Recorder must invariably satisfy the August 15th target date in order to meet the statutory deadlines for the mailing of sample ballots, the processing of absentee ballots, and the delivery of ballots and supplies to polling places, the three tasks identified by Mr. Weissburd as being tied to the August 15th target date.

27. Mr. Weissburd testified that his office has the computer technology simultaneously to maintain established precinct assignments for two different supervisorial redistricting plans. If the defendants so desire, they may maintain the established precinct assignments for the 1981 redistricting plan in one file, while they enter the established precinct assignments for *Garza* Plan 1 Modified in another file.

28. A special primary election in District 1 conducted simultaneously with the November 1990 general election is the most economical, least disruptive date on which this Court can schedule a special election.

29. The County would be spared the cost of a special primary election, which Mr. Weissburd testified would be about \$2.00 per voter (about \$735,000 in the case of District 1).

30. Conducting a special primary election simultaneously with the November 6, 1990 general election is likely to result in a higher level of voter participation for the special primary election than would result on other potential special election dates.

31. There remains sufficient time before November 6, 1990 to have a reasonable candidate filing period and campaign period. This Court takes notice of the fact that this case has generated

extensive publicity and put potential candidates on notice that an election could be called promptly to remedy the existing discriminatory electoral system. As a consequence, voters in District 1 should have ample notice of the November 6, 1990 special election and candidates should have sufficient time to garner financial support and to mount an effective campaign in the district.

32. Mindful of the effect that an order for a special election has upon the candidates who ran for Supervisor in District 1 and District 3 on June 5, 1990, the Court finds that the equities favor a waiver of the statutory filing fee for all such persons. Likewise, the Court is aware that the new boundaries of District 1 do not include the residences of Sarah Flores and Gregory O'Brien. The equities favor giving them and others who reside in District 1 of the 1981 plan but who do not currently reside in District 1 as redrawn an opportunity to run in the special election by waiving the pre-filing residency requirement.

33. If a candidate is elected at the special election on November 6, 1990, the candidate will be able to assume office on December 3, 1990, the regularly scheduled transition date under the Los Angeles County Charter.

34. If a special general election in District 1 is required because no candidate receives a majority of the votes cast at the special primary election, the special general election should be held on December 4, 1990, in order to reduce to the minimum the amount of time the incumbent supervisor in District 1 will holdover in office pursuant to the Los Angeles County Charter.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The 1981 redistricting plan used to elect the Los Angeles County Board of Supervisors violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth Amendment of the Constitution.

2. The defendants, their agents and successors in office, and all persons acting in concert with them, are permanently enjoined from conducting any election pursuant to the 1981 redistricting plan, including but not limited to the general election for Supervisor in District 1 scheduled for November 6, 1990.

3. The June 5, 1990 primary election for Supervisor in District 1, in which no candidate received a majority of the votes cast, shall have no force or effect.

4. The June 5, 1990 primary election for Supervisor in District 3 on June 5, 1990, in which Supervisor Edelman received a majority of the votes cast, shall not be affected by this order.

5. Defendants, their agents and successors in office and all persons acting in concert with them, shall immediately begin to take all steps necessary to implement the remedial redistricting plan described in Appendix A as the plan for electing the Los Angeles County Board of Supervisors.

6. A special primary election shall be held on November 6, 1990 in District 1 of the plan described in Appendix A. If no candidate receives a majority of the votes cast at the primary, a special general election shall be held on December 4, 1990.

7. The election(s) required by this order shall be held in accordance with the schedule established in Appendix B.

8. The Defendant Registrar-Recorder immediately shall begin to make the changes necessary to established precinct and voter assignment records for purposes of holding the special primary election in District 1 on November 6, 1990.

9. Nothing in this order shall preclude the Registrar-Recorder from maintaining the computer files for the established precinct and voter assignments based upon the 1981 plan.

10. Defendants shall utilize, and Plaintiff United States shall make available, the services of David Ely, of Pactech Data and Research, Inc., for consultation and technical assistance regarding the assignment of the established pre-

cincts for *Garza Plan 1 Modified* contained in Appendix A. Arrangements for such consultation and technical assistance shall be made through counsel.

11. Candidate filing fees shall be waived for all persons who paid fees to run for Supervisor in District 1 or District 3 on June 5, 1990, and who otherwise qualify as candidates for the special primary election to be held on November 6, 1990.

12. Any candidate who was nominated for election in the June 5, 1990 primary for an office other than Supervisor shall not for that reason be barred from becoming a candidate for Supervisor in District 1 in the special election.

13. All persons residing within the boundaries of District 1 under the 1981 plan or District 1 of the plan described in Appendix A shall be deemed to satisfy the residency requirement for purposes of qualifying as a candidate for Supervisor in the special election in District 1. To hold office as the Supervisor for District 1 a person must become a resident and elector of the District within 30 days of taking office.

14. The fact that Supervisor Schabarum, the incumbent in District 1, does not reside in District 1 of the plan described in Appendix A shall not preclude him from serving as Supervisor for District 1 for the remainder of his term.

15. If a Supervisor is elected in the special primary election on November 6, 1990, the term of office shall begin at noon on December 3, 1990 in accordance with Article II, Section 6 of the Charter of the County of Los Angeles. If no candidate receives a majority of the votes cast in the special primary election and a special general election is required to be held on December 4, 1990, the term of office shall begin at noon on December 19, 1990, and the term of the incumbent in District 1 shall be extended until that time.

16. All provisions of state law and the county charter not inconsistent with the provisions of this Order shall govern the special election.

17. The Court retains jurisdiction of this action to consider the request of the plaintiffs for relief under Section 3(c) of the Voting Rights Act and to enter such further relief as may be appropriate.

IT IS SO ORDERED.

DATED: August 6, 1990

Honorable David V. Kenyon
United States District Judge

Presented by:
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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

YOLANDA GARZA, *et al.*,
Plaintiffs-Appellees,
vs.
COUNTY OF LOS ANGELES, *et al.*,
Defendants-Appellants.
-
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
and
LAWRENCE K. IRVIN, *et al.*,
Intervenors-Appellees
vs.
COUNTY OF LOS ANGELES, *et al.*,
Defendants-Appellants.

FILED
AUG 16 1990
CLERK, U.S. COURT
OF APPEALS
No. 90-55944
DC# CV 88-5143 KN
Central California
No. 90-55945
DC# CV-88 -5435 KN
Central California
ORDER

Before: NELSON, BEEZER and KOZINSKI, Circuit Judges

These appeals raise difficult and close legal questions and neither side has demonstrated that the equities strongly favor going forward with their chosen election on November 6. Rather the equities favor maintaining the status quo pending consideration of this matter by the merits panel. Accordingly, the county shall hold no election for Supervisor District 1 pending further order of this court. All portions of the district court's order that require the County to prepare for a remedial primary are stayed. The parties may seek a modification of this order or other interlocutory relief in their briefs on the merits. All pending and subsequent motions in this case are referred to the merits panel.

JUDGE NELSON strongly dissents from this order and would deny the stay in its entirety.

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FILED
NOV 9 1990
CLERK, U.S. DISTRICT
COURT
CENTRAL DISTRICT OF
CALIFORNIA

ENTERED
NOV 13 1990
CLERK, U.S. DISTRICT
COURT
CENTRAL DISTRICT OF
CALIFORNIA

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

YOLANDA GARZA, *et al.*,
Plaintiffs,

UNITED STATES OF
AMERICA
Plaintiffs,

LAWRENCE K. IRVIN, *et al.*,
Plaintiff-Intervenors,

vs.

COUNTY OF LOS ANGELES,
CALIFORNIA; LOS ANGELES
BOARD OF SUPERVISORS;
et al.

Defendants.

No. CV 88-5143 KN (Ex)

No. CV 88-5435 KN (Ex)

Kn ORDER RE:
SPECIAL ELECTION
SCHEDULE

THIS CONSTITUTES NOTICE
OF ENTRY
AS REQUIRED BY FRCP,
RULE 77(d).

*Attorneys for Garza Plaintiffs
continued from previous page*

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Of Counsel

The Ninth Circuit Court of Appeals having affirmed the decision of this Court, and having remanded this case to this Court to set a new special election schedule,

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The 1981 redistricting plan used to elect the Los Angeles County Board of Supervisors violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth Amendment of the Constitution.

2. The defendants, their agents and successors in office, and all persons acting in concert with them, are permanently

enjoined from conducting any election pursuant to the 1981 redistricting plan.

3. The June 5, 1990 primary election for Supervisor in District 1, in which no candidate received a majority of the votes cast, shall have no force or effect.

4. The June 5, 1990 primary election for Supervisor in District 3 on June 5, 1990, in which Supervisor Edelman received a majority of the votes cast, shall not be affected by this order.

5. Defendants, their agents and successors in office and all persons acting in concert with them, shall immediately begin to take all steps necessary to implement the remedial redistricting plan described in Appendix A as the plan for electing the Los Angeles County Board of Supervisors.

6. A special primary election shall be held on January 22, 1991 in District 1 of the plan described in Appendix A of the August 6, 1990 order. If no candidate receives a majority of the votes cast at the primary, a special general election shall be held on February 19, 1991.

7. The election(s) required by this order shall be held in accordance with the schedule established in Amended Appendix B.

8. The Defendant Registrar-Recorder immediately shall begin to make the changes necessary to established precinct and voter assignment records for purposes of holding the special primary election in District 1 on January 22, 1991.

9. Nothing in this order shall preclude the Registrar-Recorder from maintaining the computer rules for the established precinct and voter assignments based upon the 1981 plan.

10. Defendants shall utilize, and Plaintiff United States shall make available, the services of David Ely, of Pactech Data and Research, Inc., for consultation and technical assistance regarding the assignment of the established pre-

cincts for *Garza Plan 1 Modified* contained in Appendix A of the August 6, 1990 order. Arrangements for such consultation and technical assistance shall be make [sic] through counsel.

11. Candidate filing fees shall be waived for all persons who paid fees to run for Supervisor in District 1 or District 3 on June 5, 1990, and who otherwise qualify as candidates for the special primary election to be held on January 22, 1991.

12. All persons residing within the boundaries of District 1 under the 1981 plan or District 1 of the plan described in Appendix A shall be deemed to satisfy the residency requirement for purposes of qualifying as a candidate for Supervisor in the special election in District 1. To hold office as the Supervisor for District 1 a person must become a resident and elector of the District within 30 days of taking office.

13. If a Supervisor is elected in the special primary election on January 22, 1991, the term of office shall begin at noon on February 8, 1991. If no candidate receives a majority of the votes cast on the special primary election and a special general election is required to be held on February 19, 1991, the term of office shall begin at noon on March 8, 1991.

14. The term of the incumbent in District 1 shall be extended until such time as a supervisor is elected in either the special primary or general election. The fact that Supervisor Schabarum, the incumbent in District 1, may not reside in District 1 of the plan described in Appendix A shall not preclude him from serving as Supervisor for District 1 for the remainder of his term.

15. All provisions of state law and the county charter not inconsistent with the provisions of this Order shall govern the special election.

16. The Court retains jurisdiction of this action to consider the request of the plaintiffs for relief under Section 3(c) of the Voting Rights Act and to enter such further relief as may be appropriate.

IT IS SO ORDERED.

DATED: November 9, 1990

**Honorable David V. Kenyon
United States District Judge**

Presented by:

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by Richard P. Fajardo

Amended Appendix B***ELECTION SCHEDULE***

Nov 9-27, 1990	Period for filing-in-lieu-fee petitions pursuant to Cal. Elec. Code § 6494.
Nov 12-30, 1990	Period for filing declarations of candidacy and nomination papers pursuant to Cal. Elec. Code § 6490.
Nov. 30, 1990	Filing of Candidate statements pursuant to Cal. Elec. Code § 10012.
Dec. 3, 1990	Drawing of randomized alphabet for purposes of determining the order of names of the candidates on the ballot pursuant to Cal. Elec. Code § 10216-10217.5.
Dec 17, 1990 to Jan 11, 1991	Sample ballots distributed pursuant to Cal. Elec. Code § 10010.
Dec 24, 1990 to Jan 15, 1991	Absentee ballots applications received pursuant to Cal. Elec. Code § 1002.
Jan 22, 1991	Special Primary Election
Feb 5, 1991	Certification of primary election results pursuant to Cal. Elec. Code § 17088.
Feb 19, 1991	General Election.
Mar 5, 1991	Certification of general election results pursuant to Cal. Elec. Code § 17088.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

YOLANDA GARZA, et al.,
Plaintiff-Appellees,

vs.

COUNTY OF LOS ANGELES,
et al.,
Defendant-Appellees,

**UNITED STATES OF
AMERICA,**
Plaintiff-Appellee,

and

LAWRENCE K. IRVIN, et al.,
Intervenors-Appellees,

vs.

COUNTY OF LOS ANGELES,
et al.,
Defendants-Appellants.

Case No. 90-55944

DC# CV-88-05143 Kn (Ex)
Central California

No. 90-55945

DC# CV-88-05435 Kn (Ex)
Central California

**FIRST REQUEST FOR JUDICIAL NOTICE
BY DEFENDANT-APPELLANT COUNTY OF LOS ANGELES
RE: 1990 CENSUS DATA**

DEWITT W. CLINTON
COUNTY COUNSEL OF
LOS ANGELES
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As disclosed in its opening (Op. Br. at 10 and fn. 8 and reply (Reply Br. at 1-4) briefs, the County of Los Angeles ("County") is in receipt of preliminary 1990 census data from the United States Department of Commerce, Bureau of the Census. This new data calls into serious question the Population Estimation and Projection System ("PEPS") estimates and projections used by the district court to find a violation of Section 2 of the Voting Rights Act (42 U.S.C. 1973) and the 14th Amendment of the United States Constitution, and to order a remedial plan. It also bears on the issue of laches. The County hereby requests under Federal Rule of Evidence 201 that judicial notice be taken of the currently available 1990 population numbers prepared by the United States Department of Commerce—Bureau of the Census:¹

A. Population and Housing Unit list for the State of California (and cities therein) prepared by the Bureau of the Census for the Postcensus Local Review Program.

B. Memorandum from the Bureau of the Census to All Governors and State Legislative Leaders regarding Delivery of Redistricting Data to States.

C. Declaration of Dr. William A.V. Clark.

As described in the accompanying Memorandum of Points and Authorities, the new Census data directly is relevant to the issues raised in this appeal.

¹The County will provide this Court with any further Census data it receives from the Census Bureau. Therefore, this request is titled "First Request For Judicial Notice."

Therefore, the County respectfully requests that this Court take Judicial Notice of the 1990 Census data and interpretive material presented herein.

Dated: September 21, 1990

Attorneys for Defendant-
Appellant

By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

There can be no doubt that the population data used in the district court by the parties in this matter is inextricably intertwined with the district court's finding of liability against the County, the district court's rejection of the County's proposed remedial plan, and the district court's (now stayed) implementation of the Garza Plan 1 (modified) remedial plan. These district court findings and orders are the essence of these appeals. Therefore, the issue of accurate population data is crucial to this Court's assessment of the matters raised by these appeals.

The 1990 preliminary census counts for cities and counties has just become available to states, counties, and cities across the United States. The material of which judicial notice is sought reflects that the PEPS estimates are over 300,000 persons too high in one district (District 1, the district court's Hispanic majority district) and nearly 250,000 people too low in another district (District 5). The total variance of the district court's plan, using the new census data, is over 33%.

1. *The County's Request Meets The Standards For Judicial Notice*

The County seeks judicial notice of two categories of materials. The first category is material directly from the Census Bureau—its list of California population and housing units (Exhibit A, hereto) and an explanatory letter setting forth the deadlines the Census Bureau hopes to meet for final state population numbers. (Exhibit B, hereto). The second category is a Declaration of County demographer Dr. Clark setting forth straightforward mathematical calculations not reasonably subject to dispute.

Case law is clear that courts may take judicial notice of the latest Census figures. *See, e.g., Mitchell v. Rose*, 570 F.2d 129, 132 n. 2 (6th Cir. 1978), *rev'd on other grounds*, 443 U.S. 545, 99 S.Ct. 2993, 61 L.Ed.2d 739 (1979); *Goins v. Allgood*, 391 F.2d 692, 697 (5th Cir. 1968); *Traweck v. San Francisco*, 659 F.Supp. 1012, 1015 n. 1a (N.D. Cal. 1984); *Baker v. Kissimmee*, 645 F.Supp. 571, 578 n. 7 (M.D. Fla. 1968); *Aleut League v. Atomic Energy*

Commission, 337 F.Supp. 534, 538 (D.Alaska 1971). Indeed, in *Port Arthur v. United States*, 517 F.Supp. 987 (D.D.C. 1981), *aff'd*, 459 U.S. 159, 103 S.Ct. 530, 74 L.Ed.2d 334 (1982), a Voting Rights Act case, the court took judicial notice of census data published *after* trial. See, *Port Arthur*, 517 F.Supp. at 993 n.5.

2. Conclusion

As case law shows, the items for which judicial notice is sought meet the requirements for judicial notice. For these reasons, this Court should grant the County's request for judicial notice of the new 1990 Census Bureau population data.

Dated: September 21, 1990

Attorneys for Defendant-
Appellant County of Los
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Seal of Bureau of the Census Washington, D.C.
OFFICE OF THE
DIRECTOR

**RECEIPT AND USE OF POSTCENSUS
LOCAL REVIEW DATA**

Per your request, we are providing your data generated for the Postcensus Local Review Program. You have previously accepted receipt of these data under the following conditions.

1. You understand that the Census Bureau generated these data solely for use in the coverage improvement operation called the Postcensus Local Review Program.

2. You understand that data from the Postcensus Local Review Program represent partial and preliminary results from the 1990 decennial census and are likely to change pending completion of the Postcensus Local Review Program and other census enumeration and coverage improvement activities.

3. You understand that these partial and preliminary data from the Postcensus Local Review Program may differ by an unpredictable amount from the final and official 1990 decennial census data and apportionment counts issued to the President by December 31, 1990, and the P.L. 94-171 redistricting data to be issued by April 1, 1991.

4. You understand that the Census Bureau is releasing these partial and preliminary data from the Postcensus Local Review Program for information purposes only. The Census Bureau neither encourages nor sanctions use for official purposes, such as budgeting or redistricting activities.

5. You understand that since the Postcensus Local Review data are preliminary in nature, that it is premature to raise questions about the content of the data. Therefore, it is inappropriate to request the Census Bureau to respond to such inquiries or to speculate on the final census results.

1990 DEC
PRELIMINARY HOUSING

STATE: CALIFORNIA
PAGE: 2 DATE: 08-16-90

GOVERNMENT

<u>Code</u>	<u>Name</u>
CO 06 101	Sutter County
CO 06 103	Tehama County
CO 06 105	Trinity County
CO 06 107	Tulare County
CO 06 109	Tuolumma County
CO 06 111	Ventura County
CO 06 113	Yolo County
CO 06 115	Yuba County
PL 06 0003	Adelanto city
PL 06 0007	Agoura Hills city
PL 06 0010	Alameda city
PL 06 0020	Albany city
PL 06 0025	Alhambra city
PL 06 0050	Alturas city
PL 06 0065	Amador City city
PL 06 0070	Anaheim city
PL 06 0075	Anderson city
PL 06 0080	Angels city
PL 06 0085	Antioch city
PL 06 0090	Apple Valley town
PL 06 0105	Arcadia city
PL 06 0110	Arcata city
PL 06 0130	Arroyo Grande city
PL 06 0135	Artesia city
PL 06 0139	Arvin city
PL 06 0145	Atascadero city
PL 06 0150	Atherton town
PL 06 0155	Atwater city
PL 06 0160	Auburn city
PL 06 0165	Avalon city
PL 06 0170	Avenal city
PL 06 0175	Azusa city
PL 06 0180	Bakersfield city
PL 06 0185	Baldwin Park city
PL 06 0190	Banning city
PL 06 0195	Barstow city
PL 06 0205	Beaumont city
PL 06 0210	Bell city
PL 06 0215	Bellflower city

ENNIAL CENSUS

G AND POPULATION COUNTS

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

MENTAL UNIT

<u>All Housing Units</u>	<u>All Persons</u>	<u>Persons in Group Qtrs</u>
24131	64007	830
20367	49355	904
7530	13030	232
104787	303622	5200
25090	40153	4247
228362	650880	12502
52627	138554	6760
21141	57726	1911
2647	9499	0
6849	20190	10
30356	72950	5782
7307	15803	10
29632	80740	1284
1248	2843	40
92	166	0
93252	264959	3670
3235	8251	91
1226	2571	22
22624	81379	327
16638	45851	120
19424	48007	830
6300	15119	1249
6052	14274	153
4538	15384	498
2454	9209	79
8025	22581	270
2508	6700	95
7351	21816	118
4784	10815	205
0	12	12
1758	9652	4192
12995	39844	1147
65572	171601	2774
17157	68481	895
9259	20035	384
8472	21205	155
3709	9587	199
9395	23812	79
24101	61495	672

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<u>Code</u>	<u>Name</u>	<u>All Housing Units</u>	<u>All Persons</u>	<u>Persons in Group Qtrs</u>
PL 06 0220	Bell Gardens city	9545	41990	438
PL 06 0225	Belmont city	10293	23659	175
PL 06 0230	Belvedere city	1020	2103	0
PL 06 0235	Benicia city	9481	23954	42
PL 06 0245	Berkeley city	45301	89111	9347
PL 06 0250	Beverly Hills city	15707	31783	69
PL 06 0255	Big Bear Lake city	8538	5187	1
PL 06 0265	Biggs city	548	1587	0
PL 06 0275	Bishop city	1763	8422	100
PL 06 0280	Blue Lake city	518	1182	0
PL 06 0290	Blythe city	2640	7804	158
PL 06 0315	Bradbury city	279	816	0
PL 06 0320	Brawley city	6122	18865	214
PL 06 0325	Brea city	12624	32076	96
PL 06 0327	Brentwood city	2618	7515	49
PL 06 0328	Brisbane city	1385	2937	42
PL 06 0335	Buena Park city	23124	68028	201
PL 06 0340	Burbank city	40940	92654	814
PL 06 0345	Burlingame city	12970	26727	487
PL 06 0365	Calexico city	4681	17908	93
PL 06 0367	California City city	2367	5765	0
PL 06 0370	Calipatria city	767	2686	0
PL 06 0375	Calistoga city	2339	4409	103
PL 06 0379	Camarillo city	18540	49768	852
PL 06 0390	Campbell city	15737	35309	148
PL 06 0400	Capitola city	5121	9846	190
PL 06 0405	Carlsbad city	27348	62711	819
PL 06 0410	Carmel-by-the-Sea city	2980	3775	32
PL 06 0433	Carpenteria city	5441	13505	157
PL 06 0440	Carson city	243874	83209	324
PL 06 0465	Cathedral City city	14737	28959	50
PL 06 0480	Ceres city	8988	25945	246
PL 06 0487	Cerritos city	15315	53089	106
PL 06 0500	Chico city	15413	38466	2990
PL 06 0510	Chino city	15985	58933	8439
PL 06 0515	Chowchilla city	2270	5863	96
PL 06 0525	Chula Vista city	49614	134158	1720
PL 06 0535	Claremont city	10943	22699	4392
PL 06 0537	Clayton city	2333	7219	0
PL 06 0538	Clearlake city	7266	11643	62
PL 06 0545	Cloverdale city	2015	4709	8
PL 06 0550	Clovis city	18828	49936	109
PL 06 0555	Coachella city	3787	16534	0
PL 06 0560	Coalinga city	3205	6071	98
PL 06 0565	Colfax city	478	949	0
PL 06 0575	Colima town	388	1074	13
PL 06 0580	Colton city	14483	39206	111

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<u>Code</u>	<u>Name</u>	<u>All Housing Units</u>	<u>All Persons</u>	<u>Persons in Group Qtrs</u>
PL 06 0585	Colusa city	1894	4910	73
PL 06 0587	Commerce city	3331	11985	99
PL 06 0590	Compton city	22905	86999	581
PL 06 0595	Concord city	43659	110840	1102
PL 06 0600	Corcoran city	2700	13291	5058
PL 06 0605	Corning city	2445	5887	19
PL 06 0610	Corona city	25414	74204	831
PL 06 0615	Coronado city	9081	18014	1750
PL 06 0620	Corte Madera town	3546	7873	0
PL 06 0625	Costa Mesa city	39675	96025	2225
PL 06 0828	Cotati city	2432	5657	0
PL 06 0635	Covina city	16009	42453	594
PL 06 0640	Crescent City city	1438	3440	95
PL 06 0658	Cudahy city	5442	22698	0
PL 06 0665	Culver City city	16889	38528	947
PL 06 0670	Cupertino city	15944	39886	312
PL 06 0685	Cypress city	14733	42582	116
PL 06 0700	Daly City city	30134	91209	631
PL 06 0705	Dana Point city	14426	31528	338
PL 06 0706	Danville city	10562	28675	134
PL 06 0715	Davis city	18161	45597	1987
PL 06 0725	Delano city	6525	22846	58
PL 06 0735	Del Mar city	2487	4784	26
PL 06 0755	Del Rey Oaks city	728	1649	0
PL 06 0765	Desert Hot Springs city	5474	11462	85
PL 06 0775	Dinuba city	3637	12661	192
PL 06 0780	Dixon city	3451	10129	42
PL 06 0785	Dorris city	361	634	0
PL 06 0790	Dos Palos city	1414	4141	6
PL 06 0795	Downey city	34212	91020	1946
PL 06 0800	Duarte city	6739	20536	682
PL 06 0802	Dublin city	6901	22951	3750
PL 06 0805	Dunsmuir city	1060	1995	9
PL 06 0827	East Palo Alto city	6897	21608	304
PL 06 0850	El Cajon city	34537	88168	1947
PL 06 0855	El Centro city	10108	21154	500
PL 06 0860	El Cerrito city	10274	22684	126
PL 06 0880	El Monte city	26991	104189	1550
PL 06 0885	El Paso de Robles (Paso Robles) city	7350	18055	54
PL 06 0895	El Segundo city	7173	15145	2
PL 06 0910	Emeryville city	3601	6693	0
PL 06 0920	Encinitas city	21909	54474	1584
PL 06 0930	Escalon city	1597	4291	0
PL 06 0935	Escondido city	41767	108069	1340
PL 06 0940	Etna city	344	821	0
PL 06 0945	Eureka city	11067	25179	836

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Code	Name	All Housing Units	All Persons	Persons in Group Qtrs
PL 06 0950	Exeter city	2512	6415	65
PL 06 0956	Fairfax town	3180	6805	0
PL 06 0960	Fairfield city	25724	74109	2915
PL 06 0986	Farmersville city	1631	5818	1
PL 06 1000	Ferndale city	574	1282	0
PL 06 1010	Fillmore city	3553	11616	250
PL 06 1015	Firebaugh city	1221	4267	0
PL 06 1025	Folsom city	9299	29484	6714
PL 06 1030	Fontana city	28115	85281	462
PL 06 1050	Fort Bragg city	2475	5712	109
PL 06 1055	Fort Jones town	300	637	0
PL 06 1060	Fortuna city	9698	8703	177
PL 06 1062	Foster City city	11761	28121	102
PL 06 1065	Fountain Valley City	17919	53405	510
PL 06 1070	Fowler city	1074	8113	48
PL 06 1080	Fremont city	82253	172071	1131
PL 06 1090	Fresno city	128592	258592	7383
PL 06 1095	Fullerton city	42265	112476	1739
PL 06 1100	Gall city	2973	8610	165
PL 06 1105	Gardena city	16821	49220	171
PL 06 1110	Garden Grove city	45715	141133	1833
PL 06 1115	Gilroy city	9606	30362	272
PL 06 1130	Glendale city	71915	176116	2333
PL 06 1135	Glendora city	16748	47257	760
PL 06 1140	Gonzales city	1157	4472	55
PL 06 1147	Grand Terrace city	4018	10796	101
PL 06 1150	Grass Valley city	4357	8976	273
PL 06 1160	Greenfield	1733	6624	12
PL 06 1170	Gridley city	1796	4707	140
PL 06 1175	Grover city	4933	11571	28
PL 06 1180	Guadalupe city	1374	5405	23
PL 06 1185	Gustline city	1578	3885	0
PL 06 1195	Half Moon Bay city	3318	6409	62
PL 06 1200	Hanford city	11617	30750	496
PL 06 1217	Hawaiian Garden city	3520	13473	9
PL 06 1220	Hawthorne city	29128	89986	432
PL 06 1225	Hayward city	41716	100295	1320
PL 06 1230	Healdsburg city	3758	9387	79
PL 06 1235	Hemet city	17890	33252	816
PL 06 1245	Hercules city	5540	16554	15
PL 06 1250	Hermosa Beach	9613	16020	15
PL 06 1251	Hesperia city	17207	49906	52
PL 06 1252	Hidden Hills city	526	1715	0
PL 06 1253	Highland city	11645	32844	150
PL 06 1265	Hillsborough Town	3785	10609	6
PL 06 1270	Hollister city	6176	18550	0
PL 06 1280	Holtville city	1477	4807	80

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Code	Name	All Housing Units	All Persons	Persons in Group Qtrs
PL 06 1295	Hughson city	1064	3232	0
PL 06 1300	Huntington Beach	72673	180746	558
PL 06 1305	Huntington Park city	14394	54969	248
PL 06 1310	Huron city	954	4651	673
PL 06 1317	Imperial city	1334	4023	26
PL 06 1320	Imperial Beach	9418	26004	624
PL 06 1327	Indian Wells city	2857	2595	0
PL 06 1330	Indio city	11927	34537	506
PL 06 1335	Industry city	169	812	261
PL 06 1340	Inglewood city	38613	106673	1499
PL 06 1345	Ione city	906	6491	4244
PL 06 1347	Irvine city	42178	109935	2160
PL 06 1350	Irwindale city	272	982	0
PL 06 1355	Isleton city	350	826	13
PL 06 1365	Jackson city	1597	5426	278
PL 06 1390	Karman city	1745	5405	0
PL 06 1400	King city	2373	7290	112
PL 06 1405	Kingsburg city	2580	7141	134
PL 06 1410	La Canada Flintridge city	6919	19333	155
PL 06 1415	Lafayette city	9261	24482	1365
PL 06 1420	Laguna Beach city	12768	23055	166
PL 06 1424	Laguna Niguel city	18130	42913	20
PL 06 1428	La Habra city	18307	50170	253
PL 06 1429	La Habra Heights city	1852	5328	0
PL 06 1434	Lake Elsinore city	6828	17920	175
PL 06 1445	Lakeport city	2139	4364	234
PL 06 1455	Lakewood city	26776	73177	63
PL 06 1460	La Mesa city	24183	52805	1243
PL 06 1462	La Mirada city	13355	40354	1437
PL 06 1476	Lancaster city	35248	95101	4281
PL 06 1477	La Palma city	4265	13682	2
PL 06 1480	La Puente city	9273	36450	246
PL 06 1482	La Quinta city	5693	10723	2
PL 06 1485	Larkspur city	5880	10759	206
PL 06 1490	Lathrop city	1954	6564	11
PL 06 1500	La Verne city	11106	30827	671
PL 06 1505	Lawndale city	9729	26831	50
PL 06 1510	Lemon Grove city	6650	23763	773
PL 06 1515	Lemoore city	4871	13477	16
PL 06 1525	Lincoln city	2596	7157	94
PL 06 1550	Lindsay city	2669	8285	51
PL 06 1581	Live Oak city	1431	4315	118
PL 06 1570	Livermore city	21244	55848	194
PL 06 1575	Livingston city	1691	7087	0
PL 06 1585	Lodi city	19546	41808	990
PL 06 1588	Loma Linda city	6859	18084	1583
PL 06 1590	Lomita city	8254	19336	138

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<u>Code</u>	<u>Name</u>	<u>All Housing Units</u>	<u>All Persons</u>	<u>Persons in Group Qtrs</u>
PL 06 1600	Lompoc city	13061	34435	163
PL 06 1610	Long Beach city	169824	423394	12610
PL 06 1612	Loomis town	2009	5613	57
PL 06 1615	Los Alamitos city	4277	17853	385
PL 06 1620	Los Altos city	10087	26162	424
PL 06 1625	Los Altos Mills	2614	7326	4
PL 06 1630	Los Angeles city	1292728	3420235	65383
PL 06 1635	Los Banos city	4820	13443	487
PL 06 1640	Los Gatos town	11693	26905	506
PL 06 1652	Loyalton city	369	854	29
PL 06 1660	Lynwood city	14467	58741	749
PL 06 1670	McFarland city	1767	6959	53
PL 06 1660	Madra city	9507	28892	236
PL 06 1667	Mammoth Lakes town	7063	4717	0
PL 06 1690	Manhattan Beach city	14713	32003	1
PL 06 1695	Manteca city	13878	39668	218
PL 06 1700	Maricopa city	432	1160	0
PL 06 1706	Marina city	7865	22980	276
PL 06 1710	Martinez city	13768	33510	1306
PL 06 1720	Marysville city	5079	12253	625
PL 06 1730	Maywood city	5694	27602	121
PL 06 1740	Mendota city	1733	6605	0
PL 06 1745	Menlo Park city	12471	28412	1419
PL 06 1750	Merced city	18939	55289	840
PL 06 1760	Millbrae city	8124	20187	324
PL 06 1765	Mill Valley city	6124	12973	153
PL 06 1770	Milpitas city	14589	50278	3192
PL 06 1786	Mission Viejo city	25355	69951	223
PL 06 1790	Modesto city	60105	162262	2644
PL 06 1800	Monrovia city	13719	34782	202
PL 06 1805	Montague	552	1410	20
PL 06 1815	Montclair city	8908	28232	331
PL 06 1820	Montebello city	19211	59260	452
PL 06 1825	Monterey city	13183	30807	3079
PL 06 1830	Monterey Park city	20337	60567	229
PL 06 1835	Monte Sereno city	1185	3262	0
PL 06 1840	Moorpark city	7899	24912	0
PL 06 1847	Moraga town city	5696	14760	137
PL 06 1849	Moreno Valley city	36885	116421	57
PL 06 1850	Morgan Hill city	7821	22924	438
PL 06 1855	Morro Bay city	5871	9632	271
PL 06 1860	Mountain View city	31184	85375	583
PL 06 1870	Mount Shasta city	1531	3256	34
PL 06 1877	Napa city	24853	61553	1177
PL 06 1875	National City city	15088	52471	5831
PL 06 1890	Needles city	2357	51186	122
PL 06 1895	Nevada City city	1391	2806	31

<u>Code</u>	<u>Name</u>	<u>All Housing Units</u>	<u>All Persons</u>	<u>Persons in Group Qtrs</u>
PL 06 1900	Newark city	12272	37604	31
PL 06 1910	Newman city	1518	4145	0
PL 06 1915	Newport Beach city	3489	66453	719
PL 06 1919	Norco city	5780	22893	4750
PL 06 1950	Norwalk city	27224	93739	2440
PL 06 1955	Novato city	18817	47452	286
PL 06 1965	Oakdale city	4547	11736	177
PL 06 1970	Oakland city	153919	380855	7409
PL 06 1990	Oceanside city	50478	126202	1252
PL 06 1995	Ojai city	3151	7501	190
PL 06 2005	Ontario city	42419	131869	764
PL 06 2015	Orange city	37921	109877	9334
PL 06 2020	Orange Grove city	1314	5534	0
PL 06 2030	Orinda city	6511	16704	45
PL 06 2035	Orland city	2006	5172	200
PL 06 2045	Oroville city	4920	11951	654
PL 06 2050	Oxnard city	51580	137568	1666
PL 06 2060	Pacifica city	13623	37036	125
PL 06 2065	Pacific Grove city	7335	15920	185
PL 06 2072	Palmdale city	22914	66357	50
PL 06 2080	Palm Desert city	12627	22808	115
PL 06 2085	Palm Springs city	29782	38586	534
PL 06 2090	Palo Alto city	25107	54847	855
PL 06 2095	Palos Verdes Estates city	5064	13349	0
PL 06 2100	Paradise town	11628	25363	384
PL 06 2115	Paramount city	13698	47340	269
PL 06 2120	Parlier city	1798	7802	43
PL 06 2125	Pasadena city	53112	129518	4149
PL 06 2130	Patterson city	2702	8593	29
PL 06 2138	Perris city	7190	20835	182
PL 06 2140	Petaluma	16516	42937	499
PL 06 2145	Pico Rivera city	16263	56747	510
PL 06 2150	Piedmont city	3849	10572	0
PL 06 2160	Pinole city	6401	17147	6
PL 06 2170	Pismo Beach city	4563	7687	63
PL 06 2175	Pittsburg city	16845	47190	345
PL 06 2195	Placentia city	13503	40477	187
PL 06 2200	Placerville city	3513	8183	563
PL 06 2210	Pleasant Hill city	13373	31115	430
PL 06 2215	Pleasanton city	19185	49722	180
PL 06 2220	Plymouth city	396	689	2
PL 06 2223	Point Arena city	97	187	0
PL 06 2230	Pamona city	38275	129315	3145
PL 06 2245	Porterville city	9532	27823	8855
PL 06 2250	Port Hueneme city	7534	18932	1148
PL 06 2255	Portola city	1001	2190	9
PL 06 2257	Portola Valley city	1741	4319	40

Code	Name	All Housing Units	All Persons	Persons in Group Qtrs
PL 06 2260	Poway city	14604	43933	358
PL 06 2278	Rancho Cucamonga city	36169	99064	201
PL 06 2261	Rancho Mirage city	9174	9606	230
PL 06 2284	Rancho Palos Verdes city	15440	41486	381
PL 06 2288	Red Bluff city	4987	12144	487
PL 06 2290	Redding city	26641	64722	1688
PL 06 2295	Redlands city	22802	69329	2024
PL 06 2300	Redondo Beach city	28129	58860	36
PL 06 2305	Redwood City city	26726	65261	1934
PL 06 2315	Reedley city	4758	15583	220
PL 06 2320	Rialto city	23153	70795	1105
PL 06 2330	Richmond city	33676	83716	811
PL 06 2335	Ridgecrest city	11282	28161	720
PL 06 2337	Rio Dell city	1237	2982	11
PL 06 2350	Rio Vista city	1403	3784	0
PL 06 2355	Ripon city	2519	7269	11
PL 06 2360	Riverbank city	2626	8497	148
PL 06 2370	Riverside city	79582	223221	6093
PL 06 2375	Rocklin city	7274	15840	0
PL 06 2377	Rohnert Park city	13755	35827	858
PL 06 2385	Rolling Hills city	699	1828	0
PL 06 2390	Rolling Hills Estates city	2908	7059	0
PL 06 2400	Rosemead	14129	51158	892
PL 06 2405	Roseville city	17528	44384	94
PL 06 2410	Ross town	752	2056	7760
PL 06 2420	Sacramento city	153449	364663	7960
PL 06 2425	St. Helena city	2351	4946	51
PL 06 2435	Salinas city	33965	105604	1190
PL 06 2445	San Anselmo town	7216	16250	147
PL 06 2450	San Bernardino city	57782	159637	4732
PL 06 2455	San Bruno city	15439	39073	1247
PL 06 2460	San Buenaventura (Ventura) city	37699	91744	2109
PL 06 2465	San Carlos city	11188	25704	81
PL 06 2470	San Clemente city	18733	40905	53
PL 06 2473	Sand City city	85	179	1
PL 06 2475	San Diego city	428618	7094524	45507
PL 06 2477	San Dimas city	11655	32439	1086
PL 06 2480	San Fernando city	5754	22131	52
PL 06 2485	San Francisco city	326713	711407	23846
PL 06 2490	San Gabriel city	12753	36760	449
PL 06 2495	Sanger city	4918	16700	121
PL 06 2500	San Jacinto city	6505	15754	222
PL 06 2505	San Joaquin city	541	2265	6
PL 06 2510	San Jose city	257347	765207	10102
PL 06 2515	San Juan Bautista city	596	1541	0
PL 06 2519	San Juan Capistrano city	9540	25978	145
PL 06 2525	San Leandro city	30117	67718	355

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<u>Code</u>	<u>Name</u>	<u>All Housing Units</u>	<u>All Persons</u>	<u>Persons in Group Qtrs</u>
PL 06 2535	San Luis Obispo city	17745	41691	1439
PL 06 2537	San Marcos city	14442	38620	38
PL 06 2545	San Marino city	4466	12920	157
PL 06 2555	San Mateo city	36918	84829	1555
PL 06 2560	San Paolo city	8333	24709	476
PL 06 2565	San Rafael city	20996	47792	1278
PL 06 2567	San Ramon city	13130	34170	23
PL 06 2570	Santa Ana city	74593	257987	4843
PL 06 2575	Santa Barbara city	36096	94298	2400
PL 06 2580	Santa Clara city	37800	92090	2499
PL 06 2583	Santa Clarita city	39776	107741	1143
PL 06 2585	Santa Cruz city	19325	47832	2830
PL 06 2590	Santa Fe Springs	4831	15541	3
PL 06 2595	Santa Maria city	21173	60722	708
PL 06 2600	Santa Monica city	47569	85880	2510
PL 06 2605	Santa Paula city	8077	24443	183
PL 06 2615	Santa Rosa city	47609	112345	1461
PL 06 2623	Santee city	18243	52641	1582
PL 06 2630	Saratoga city	10272	27864	369
PL 06 2640	Sausalito city	4238	6857	0
PL 06 2647	Scotts Valley city	3515	8479	329
PL 06 2650	Seal Beach city	14198	24732	261
PL 06 2655	Seaside city	10841	31756	538
PL 06 2665	Sebastopol city	2944	6940	195
PL 06 2670	Selma city	4690	14541	145
PL 06 2675	Shafter city	2630	6397	125
PL 06 2690	Sierra Madre city	4868	10727	136
PL 06 2693	Signal Hill city	3654	8276	279
PL 06 2702	Simi Valley city	53099	99316	204
PL 06 2704	Solano Beach city	6331	12892	0
PL 06 2705	Soledad city	1554	6895	0
PL 06 2710	Solvang city	2046	4660	182
PL 06 2715	Sonoma city	4144	7867	83
PL 06 2720	Sonora city	2089	4080	147
PL 06 2725	South El Monte city	4751	20100	58
PL 06 2730	South Gate city	23115	86211	433
PL 06 2737	South Lake Tahoe city	14141	21237	147
PL 06 2755	South Pasadena city	10715	23759	258
PL 06 2765	South San Francisco city	18514	53090	486
PL 06 2800	Stanton city	10685	30047	300
PL 06 2805	Stockton city	72021	203861	4365
PL 06 2820	Suisun city	6867	22000	28
PL 06 2835	Sunnyvale city	50394	115439	512
PL 06 2845	Susanville city	2931	5646	184
PL 06 2855	Sutter Creek city	977	1873	0
PL 06 2860	Taft city	2368	5848	139
PL 06 2873	Tehachapi city	2455	5656	23

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Code	Name	All	All	Persons in
		Housing Units	Persons	Group Qtrs
PL 06 2875	Tehama city	176	399	0
PL 06 2878	Temecula city	9683	25557	0
PL 06 2880	Temple City city	11509	30769	512
PL 06 2897	Thousand Oaks city	37748	102795	1354
PL 06 2903	Tiburon town	3434	1195	44
PL 06 2910	Torrance city	54654	132382	1073
PL 06 2915	Tracy city	11848	32331	180
PL 06 2925	Trinidad city	200	361	1
PL 06 2945	Tulare city	11290	33063	218
PL 06 2950	Tulelake city	436	990	0
PL 06 2960	Turlock city	15331	41933	1084
PL 06 2965	Tustin city	19275	50349	1837
PL 06 2971	Twentynine Palms city	5934	11449	0
PL 06 2980	Ukiah city	5818	14520	573
PL 06 2985	Union City city	16229	53307	412
PL 06 2990	Upland city	24407	62771	424
PL 06 2995	Vacaville city	23411	70496	7590
PL 06 3000	Vallejo city	39680	107330	2698
PL 06 3005	Vernon city	52	152	8
PL 06 3007	Victorville city	15142	36482	396
PL 06 3009	Villa Park city	1956	5279	2
PL 06 3015	Visalia city	26953	74769	1833
PL 06 3017	Vista city	26202	89245	1754
PL 06 3025	Walnut city	8082	25905	14
PL 06 3030	Walnut Creek city	29984	60547	853
PL 06 3045	Wasco city	3604	12327	7
PL 06 3050	Waterford city	1457	4719	84
PL 06 3055	Watsonville city	9693	29764	376
PL 06 3063	Weed city	1246	3048	156
PL 06 3070	West Covina city	30723	94391	418
PL 06 3080	West Hollywood city	23379	35121	407
PL 06 3082	Westlake Village city	2928	7402	0
PL 06 3085	Westminister city	25883	77752	274
PL 06 3092	Westmoreland	432	1377	0
PL 06 3095	West Sacramento city	11609	28528	252
PL 06 3105	Wheatland city	684	1838	0
PL 06 3110	Whittier city	26412	78838	2502
PL 06 3115	Williams city	701	2079	64
PL 06 3120	Willits city	1956	4977	57
PL 06 3125	Willows city	2241	5982	157
PL 06 3135	Winters city	1546	4497	0
PL 06 3145	Woodlake city	1543	5647	9
PL 06 3150	Woodland city	14791	39156	750
PL 06 3155	Woodside town	1861	4833	0
PL 06 3169	Yorba Linda city	17286	52120	13
PL 06 3177	Yountville town	970	3224	1423
PL 06 3180	Yreka city	3071	6904	123

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Code	Name	All	All Persons	Persons in Group Qtrs
		Housing Units		
PL 06 3185	Yuba City city	10978	27103	564
PL 06 3186	Yucaipa city	14207	32632	306
PL 06 7003	Orange city	0	0	0
PL 06 7070	Orange city	0	0	0
IR 06 0020	Aqua Caliente Reserv.	19533	18726	278
IR 06 0095	Alturas Rancheria	0	0	0
IR 06 0125	Augustine Reservation	0	0	0
IR 06 0155	Barona Rancheria	151	544	0
IR 06 0185	Benton Paiute Reserv.	28	63	0
IR 06 0200	Berry Creek Rancheria	0	0	0
IR 06 0215	Big Bend Rancheria	3	3	0
IR 06 0240	Big Lagoon Rancheria	0	0	0
IR 06 0250	Big Pine Rancheria	156	445	0
IR 06 0265	Big Sandy Rancheria	18	48	0
IR 06 0275	Big Valley Rancheria	41	107	0
IR 06 0290	Bishop Rancheria	471	1298	0
IR 06 0325	Blue Lake Rancheria	29	58	0
IR 06 0350	Bridgeport Colony	21	50	0
IR 06 0415	Cebaten Reservation	192	793	26
IR 06 0435	Cahuilla Reservation	37	104	0
IR 06 0450	Campo Reservation	87	225	0
IR 06 0495	Capitan Grande Reserv.	0	0	0
IR 06 0555	Cedarville Rancheria	5	8	0
IR 06 0585	Chamchoul Reservation	734	357	0
IR 06 0620	Chicken Ranch Reservation	37	73	0
IR 06 0720	Cold Springs Rancheria	80	187	0
IR 06 0735	Colorado River Reserv.	1454	807	1
IR 06 0750	Colusa (Cochil Duke) Rancheria	9	22	0
IR 06 0780	Cortina Rancheria	0	0	0
IR 06 0825	Coyote Valley Reservation	42	134	0
IR 06 0870	Cuyapaipa Reservation	0	0	0
IR 06 0955	Dry Creek Rancheria	12	75	0
IR 06 1010	Elk Valley Rancheria	29	73	0
IR 06 1055	Enterprise Rancheria	4	5	0
IR 06 1170	Fort Bidwell Reservation	47	118	0
IR 06 1195	Fort Independence Reservation	9	19	0
IR 06 1235	Fort Mojave Reservation	39	119	0
IR 06 1280	Fort Yuma (Quechan) Reserv.	620	1339	4
IR 06 1390	Greenville Rancheria	16	24	0
IR 06 1395	Grind Stone Creek Rancheria	24	103	0
IR 06 1515	Hopland Rancheria	60	175	0
IR 06 1560	Inaja-Cosail Rancheria	0	0	0
IR 06 1640	Jackson Rancheria	8	21	0
IR 06 1670	Jaoul village	0	0	0
IR 06 1750	Karok Reservation	9	28	0
IR 06 1850	La Jolla Reservation	32	127	27
IR 06 1895	La Posia Reservation	8	10	0

<u>Code</u>	<u>Name</u>	<u>All Housing Units</u>	<u>All Persons</u>	<u>Persons in Group Qtrs</u>
IR 06 1925	Laytonville Rancheria	54	144	0
IR 06 1955	Likely Rancheria	0	0	0
IR 06 1970	Lone Pine Rancheria	90	241	0
IR 06 1980	Lookout Rancheria	5	17	0
IR 06 1995	Los Coyotes Reservation	0	0	0
IR 06 2100	Manchester (Point Arena) Reserv.	50	181	0
IR 06 2115	Manzanita Reservation	2	34	30
IR 06 2190	Mesa Grande Reservation	33	76	0
IR 06 2255	Middletown Rancheria	31	79	0
IR 06 2330	Montgomery Creek Rancheria	6	11	0
IR 06 2360	Morango Reservation	416	1069	0
IR 06 2495	North Fork Rancheria	2	4	0
IR 06 2635	Pala Reservation	285	773	0
IR 06 2715	Patuma Reservation	0	0	0
IR 06 2745	Pechanga Reservation	143	330	0
IR 06 2775	Picayune Rancheria	11	32	0
IR 06 2820	Pinoieville Rancheria	37	120	5
IR 06 3020	Quartz Valley Rancheria	31	71	0
IR 06 3070	Ramona Reservation	0	0	0
IR 06 3095	Redding Rancheria	0	0	0
IR 06 3115	Redwood Valley Rancheria	43	134	0
IR 06 3145	Resighini Rancheria	0	0	0
IR 06 3165	Rincon Reservation	105	519	0
IR 06 3185	Roaring Creek Rancheria	4	17	0
IR 06 3195	Robinson Rancheria	29	124	0
IR 06 3220	Rohnerville Rancheria	0	0	0
IR 06 3230	Round Valley Reservation	485	1150	0
IR 06 3235	Rumsey Rancheria	4	7	0
IR 06 3445	San Manuel Reservation	20	82	0
IR 06 3460	San Pasqual Reservation	151	521	0
IR 06 3520	Santa Rosa Rancheria	1	3	0
IR 06 3525	Santa Rosa Reservation	14	50	0
IR 06 3540	Santa Ynez Reservation	117	260	3
IR 06 3550	Santa Ysabel Reservation	56	169	0
IR 06 3720	Sheep Ranch Rancheria	0	0	0
IR 06 3735	Sherwood Valley Rancheria	9	0	0
IR 06 3750	Shingle Springs Rancheria	0	0	0
IR 06 3855	Smith River Rancheria	42	105	0
IR 06 3870	Soboba Rancheria	119	369	0
IR 06 3985	Siewariz Point Rancheria	19	83	0
IR 06 4030	Sulphur Bank (El-Em) Rancheria	23	91	0
IR 06 4060	Susanville Reservation	31	87	0
IR 06 4090	Sycuan Reservation	1	4	0
IR 06 4095	Table Bluff Rancheria	16	46	0
IR 06 4110	Table Mountain Rancheria	17	52	0
IR 06 4255	Torres-Martinez Reservation	443	1419	0
IR 06 4275	Trinidad Rancheria	26	78	0

<u>Code</u>	<u>Name</u>	<u>All Housing Units</u>	<u>All Persons</u>	<u>Persons in Group Otrs</u>
IR 06 4300	Tule River Reservation	212	796	0
IR 06 4330	Tuolumne Rancheria	54	135	0
IR 06 4375	Twenty-Nine Palm Reservation	0	0	0
IR 06 4430	Upper Lake Rancheria	23	63	0
IR 06 4500	Viajas Rancheria	154	402	0
IR 06 4665	Woodfords Community	64	234	0
IR 06 4680	XL Ranch Reservation	12	32	0
IR 06 4760	Yurck Reservation	1416	3358	76
TL 06 1235	Fort Mojave Trust Lands	3	4	0
TL 06 2835	Pit River Trust Lands	3	7	0
TL 06 3250	Round Valley Trust Lands	0	0	0

UNITED STATES DEPARTMENT OF
COMMERCE

Bureau of the Census

Washington, D.C. 20233

OFFICE OF THE DIRECTOR

Aug 8 1990

MEMORANDUM FOR All Governors, State Legislative
Leader and 1990 Census Redistricting
Data Program Liaisons

From: Marshall L. Turner, Jr.
Chief, 1990 Census Redistricting Data
Office

Subject: Delivery of P.L. 94-171 Redistricting
Data to States

Since the 1970 census, the Census Bureau has given consideration to states that face tight time deadlines for accomplishing congressional and legislative redistricting and require small-area decennial census counts.

For the 1990 Census Redistricting Data Program (Public Law 94-171), we have asked the Governors and majority and minority leaders of all 50 states to confirm to us any state constitutional, statutory or court-imposed deadlines that apply to when they must redistrict in 1991. Based on their replies, we have categorized states into the four tiers shown on page 2 this memorandum. The assignment of states reflects also such factors as dates of 1991 legislative sessions, coverage under Section 5 of the Voting Rights Act, 1991 primary and general election dates, and so forth. Material from the National Conference of State Legislatures, the American Legislative Exchange Council and discussions with U.S. Justice Department officials were also used in these categorizations.

We will attempt to process the P.L. 94-171 Counts in a sequence of Tier 1, Tier 2, Tier 3, and Tier 4.

Two important points should noted:

1. We cannot predict what, if any, processing or other unforeseen problems might make it impossible to complete and deliver the P.L. 94-171 data for a given state at a given time prior to the legal deadline of April 1, 1991.

2. We now expect that the time to finish all states' data will be an 8 to 9-week period beginning in late January 1991 and extending through late March 1991.

1990 Census P.L. 94-171

Data Files Planned Processing Sequence

Tier 1

Arkansas
Indiana
Louisiana
Mississippi
New Jersey
South Dakota
Texas
Vermont
Virginia
Wyoming

Tier 2

Alabama
Delaware
Hawaii
Illinois
Missouri
Nebraska
Nevada
North Carolina
Oklahoma
Oregon

Tier 3

California
Connecticut
Iowa
Kansas
Maryland

New York
Ohio
Pennsylvania

Tier 4

Alaska
Arizona
Colorado
District of Columbia
Florida
Georgia
Idaho
Kentucky
Maine
Massachusetts
Michigan
Minnesota
Montana
New Hampshire
New Mexico
North Dakota
Rhode Island
South Carolina
Tennessee
Utah
Washington
West Virginia
Wisconsin

If you have questions, please contact me at (301) 763-3856 or Cathy Talbert at (301) 763-4070. Telefax messages to (301) 763-5148.

DECLARATION OF DR. WILLIAM A. V. CLARK

I, William A. V. Clark, hereby declare as follows:

1. I have personal, first hand knowledge of the facts stated in this declaration and, if called to testify, could and would testify thereto.

2. I am Chairman of the Geography Department at UCLA, am a professional demographer, and was an expert witness in the trial proceedings in this case.

3. The Bureau of the Census has released preliminary city and county population data. The 1990 census preliminary population estimate for Los Angeles County ("County") is 8,719,699. The allocation of this Census Bureau population across the 5 districts of the Garza plan ordered by the district court as the remedy plan in this case reveals significant differences with the Population Estimation and Projection System ("PEPS") data used by the district court.

Population Estimates for Garza Plan

<u>Dist</u>	<u>PEPS 1990 Pop Estimate</u>	<u>Diff from 1/5th Dist</u>	<u>Census 1990 Pop Estimate</u>	<u>Diff from 1/5th Dist</u>	<u>Diff Between PEPS and Census</u>
1	1,799,835	3,813	1,456,565	-281,129	-323,270
2	1,775,665	-357	1,616,898	-120,796	-158,767
3	1,763,985	-12,037	1,777,166	39,472	+13,181
4	1,776,240	218	1,805,842	68,148	+29,602
5	1,784,383	8,361	2,031,998	294,304	+247,615
Total	8,880,108		8,688,469		-191,639

4. The allocation procedure I used to obtain the above figures involved assigning the city population to the respective districts and calculating the population of tracts not in cities from the

housing units in each tract. The population in each tract in the unincorporated areas and in Los Angeles city was calculated from the number of housing units times a population per housing unit determined from the value of a nearby city. The census estimate created from summing the city population and the tract estimates is 31,200 less than the Census Bureau published estimate and 191,639 less than the PEPS 1990 estimate. While the population totals for PEPS and the Census Bureau are similar, there are considerable differences in the distribution of population across districts. The analysis reveals that there is a 33% variance over the districts of the Garza plan, and District 5 is almost 17% greater than one-fifth of the County's reported population.

1990 Census Population Estimates for Garza Plan

Dist	Pop in Other than LA Cities	Pop in Grp Qrts in LA City & Co.	Pop in Occ. Housing Units in City & Co.	Total Pop	Var
1	755,723	24,597	676,245	1,456,565	-16.18
2	521,256	16,113	1,079,529	1,616,898	-6.95
3	204,222	29,367	1,543,577	1,777,166	+2.27
4	1,344,270	5,306	456,266	1,805,842	+3.92
5	1,465,776	16,858	549,364	2,031,998	+16.94
Total	4,291,247	92,241	4,304,981	8,688,469	33.12

5. Even if the higher 1990 PEPS total population estimate, rather than the Census Bureau's estimate, is accepted for the total Los Angeles County population and all additional 191,639 persons are assigned to District 1, the population variance in the Garza plan will still be 21.6 percent.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the above is true and correct.

Executed on September 20, 1990 at Los Angeles, California.

Dr. William A.V. Clark

FILED

Oct 18 1990

CLERK, U.S. COURT OF APPEALS

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**YOLANDA GARZA,
SALVADOR LEDEZMA,
RAYMOND PALACIOS,
MONICA TOVAR, et al.,**

Plaintiff/Appellees,

v.

**COUNTY OF LOS ANGELES,
BOARD OF SUPERVISORS,
LOS ANGELES COUNTY,
DEANE DANA,
PETER F. SCHABARUM,
KENNETH F. HAHN, et al.,**

Defendants/Appellants.

No. 90-55944/45

D.C.# CV-88-05135-Kn

O R D E R

**Before: SCHROEDER, NELSON and KOZINSKI, Circuit
Judges.**

**Appellant County of Los Angeles motion to take judicial notice
is DENIED.**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

YOLANDA GARZA, et al
Plaintiffs,

UNITED STATES OF AMERICA
Plaintiff,

vs.

**COUNTY OF LOS ANGELES,
LOS ANGELES BOARD OF
SUPERVISORS, et al,**
Defendants,

LAWRENCE K. IRVIN, et al,
Plaintiff-Interveners.

No. CV 88-5143-Kn

CV 88-5435-Kn

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

August 3, 1990

RON WORTH, CRS
Official Court Reporters
406 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 680-4047

me to ask two or three questions.

THE COURT: Mr. Field?

MR. FIELD: No objection.

THE COURT: Does a special election cost more than a general election, a regular election? That opens it. He can answer.

In the context that we have been discussing, what is the cost effect?

THE WITNESS: All right. Generally, the cost of a special election is two dollars per voter. The cost of putting on a major general election is approximately three dollars per voter.

MR. BURKE: Is that per registered voter in the area?

THE WITNESS: Per registered voter in the area where the election is being conducted.

MR. BURKE: Thank you, Your Honor.

THE COURT: Anything further?

MR. MCDERMOTT: Could we have just a moment, Your Honor?

THE COURT: Sure.

(Discussion off the record.)

MR. MCDERMOTT: We have no further questions.

THE COURT: All right. Thank you, sir.

MR. M. ROSENBAUM: Your Honor, we have one

FILED
AUG 3 1990
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

YOLANDA GARZA, *et al.*,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff,

v.

COUNTY OF LOS ANGELES,
CALIFORNIA, LOS ANGELES
BOARD OF SUPERVISORS, *et al.*,
Defendants

LAWRENCE K. IRVIN, *et al.*

Plaintiffs-Intervenors.

No. CV 88-5143 KN(Ex)

No. CV 88-5435 KN(Ex)

FINDINGS OF FACT
AND CONCLUSIONS
OF LAW Re Proposed
Remedial Plan Submitted
by County of Los
Angeles

The Court, having received and considered the remedial plan proposed by the Board of Supervisors of the County of Los Angeles, the papers filed in support thereof and in opposition thereto, and having held an evidentiary hearing on the validity of such plan, HEREBY REJECTS the proposed remedial plan as submitted and RENDERS the following findings of fact and conclusions of law:

I. Background

1. On June 4, 1990, this Court issued its Findings of Fact and Conclusions of Law determining that the 1981 redistricting plan for the Los Angeles County Board of Supervisors violates Section 2 of the Voting Rights Act of 1965 as amended, 42 U.S.C. §1973, and the Fourteenth Amendment of the United States Constitution.

2. On June 7, 1990, at a status conference, the Court provided a reasonable opportunity to the defendants¹ to propose a remedial redistricting plan.

3. On June 27, 1990, defendants submitted a proposed remedial plan to the Court. (hereinafter "the County Plan").²

II. General Features of Proposed Plan

4. District 3 is the most heavily Hispanic district, with a 1990 Hispanic total population of approximately 74 percent; a November 1988 Spanish surname voter registration percentage of 45.5 percent; and an estimated Spanish Origin percentage of 47.8 percent. Under the County Plan, Hispanics constitute 57.3 percent of the voting age citizens.³

5. Two narrow fingers extend west from the main body of District 3 in downtown Los Angeles. The southwesterly finger extends to the residence of Supervisor Edelman. The northern finger includes portions of Sun Valley, Sylmar and Pacoima and the City of San Fernando. The San Fernando extension moves away from the central part of the Hispanic Core⁴ area in the San Gabriel Valley, north through a non-Hispanic territory to a portion of the San Fernando Valley.

¹Since the commencement of this lawsuit, Supervisors Hahn and Edelman have retained counsel separate from the law firm representing the County and Supervisors Antonovich, Dana and Schabarum. The term "defendants," in this context is used in reference to the County of Los Angeles and to Supervisors Antonovich, Dana and Schabarum.

²Supervisors Antonovich, Dana and Schabarum voted to submit the redistricting plan at issue in this remedial phase of the litigation to the Court (hereinafter "County Plan"). Supervisors Edelman and Hahn oppose the County Plan as do the United States, the *Garza* plaintiffs, and the *Irvin* intervenors.

³The County Plan utilizes the Estrada methodology for estimating voting age citizenship. Defendants' Memorandum of Points and Authorities in Support of County's Remedial Redistricting Plan at 15.

⁴This term refers to a compact and contiguous area containing a concentration of the County's Hispanic population. The Hispanic Core, (Footnote continued on next page)

6. District 2 is the most heavily black district in the County Plan. District 2 has a 1990 black population percentage of approximately 36 percent. Supervisor Hahn resides within District 2. The cities of Beverly Hills and West Hollywood and part of the City of Compton are added to District 2, along with most of the Hollywood community. Downtown areas formerly in District 2 are moved under the County Plan to District 3 and West Los Angeles is moved to District 4.

7. District 1 remains almost entirely within the San Gabriel Valley. Outgoing incumbent Supervisor Schabarum and the two candidates scheduled for a November run-off election reside in District 1. District 1 retains significant portions of the Hispanic Core in the San Gabriel Valley, including the Hispanic-majority cities of La Puente and Irwindale, and portions of the Hispanic-majority cities of Baldwin Park, El Monte, Montebello, Rosemead and Santa Fe Springs.

8. District 5 gives up population to the San Fernando Valley finger in District 3, while adding other population from District 3 in the San Fernando Valley. Supervisor Antonovich remains the incumbent in District 5.

9. District 4 is relatively unchanged from the existing plan with the exception of part of the City of Compton moving to District 2 and taking in areas of West Los Angeles from District 2. Supervisor Dana remains the incumbent in District 4.

10. The County Plan is based on the Los Angeles County Department of Health Services' projections of total population for 1990, by race and ethnicity, pursuant to the Department's Popu-

which begins in the eastern part of the City of Los Angeles and extends eastward into the San Gabriel Valley, includes Boyle Heights, Lincoln Heights and El Sereno in the City of Los Angeles, the unincorporated East Los Angeles community, and the cities of Rosemead, Pico Rivera, Montebello, La Puente, El Monte, Maywood, Vernon, Bell Gardens, and other cities and unincorporated communities. Findings of Fact and Conclusions of Law, June 4, 1990 at 17.

lation Estimation and Projection System (PEPS). The Court finds that 1990 PEPS projections are a reliable and acceptable population basis for redistricting Los Angeles County.

11. The projected total population of Los Angeles County in 1990 is 8,880,109 persons. White non-Hispanics comprise 39.8 percent of the total population; Hispanics 36.6 percent; Blacks 11 percent; and 12.6 percent Asian or other. Based on the 1990 PEPS projections, each district in a five-district plan should contain 1,776,022 persons.

12. The projected voting age population Los Angeles County in 1990 is 6,503,939 persons. White non-Hispanics comprise 44.1 percent of the voting age population; Hispanics 32.7 percent; Blacks 10.4 percent; and 12.8 percent Asian or other.

13. At the time of the 1990 primary election, Los Angeles County had 3,398,512 registered voters, of whom 14 percent were Spanish-surnamed and 15.1 percent were of Spanish-origin as determined by a procedure presented by Dr. O'Hare during the liability phase of this litigation.

14. PEPS data demonstrates that between 1980 and 1990, the Hispanic Core of contiguous census tracts in which 50 percent or more of the total population was Hispanic increased in number from 229 census tracts to 298 census tracts. The Hispanic Core, according to the 1990 PEPS data, contains 2,107,807 persons, of whom 74.5 percent are Hispanic.

15. In 1990, there are 23 cities in Los Angeles County with Hispanic-population majorities, 21 of which are located within the Hispanic Core area.

16. In addition to the Hispanic Core area, several smaller concentrations of Hispanic population are developing in areas which include the San Fernando Valley in and around the City of San Fernando and the communities of Pacoima and Sylmar, in and around the City of Los Angeles.

17. The population characteristics of the County Plan are as follows:

<u>District</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Hispanic</u>	<u>Other</u>
1	1,780,555	45.3	3.7	35.6	15.4
2	1,775,224	23.4	35.5	28.4	12.7
3	1,782,630	12.6	3.3	74.1	10.0
4	1,757,996	55.8	7.2	22.5	14.5
5	1,783,704	62.2	5.3	22.2	10.3
Total	8,880,109	39.8	11.0	36.6	12.6

18. Using the estimates of the voting age citizen population derived by plaintiffs' expert, Dr. Leobardo Estrada, the County Plan has the following characteristics:

<u>District</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Hispanic</u>	<u>Other</u>
1	1,030,461	58.1	4.0	29.4	8.6
2	1,001,433	34.1	43.2	14.6	8.2
3	659,989	27.9	6.4	58.2	7.5
4	1,104,851	69.5	7.3	14.8	8.4
5	1,111,878	76.2	5.5	13.5	4.9
Total	4,908,612	55.8	13.4	23.4	7.5

19. Using 1990 voter registration, the County Plan has the following characteristics:

<u>District</u>	<u>Total</u>	<u>Spanish Surname</u>	<u>Spanish Origin</u>
1	712,918	19.1	20.4
2	672,617	6.9	7.9
3	341,847	47.5	49.6
4	831,916	8.3	9.2
5	839,214	7.1	8.1
Total	3,398,512	14.0	15.1

III. Standard of Review

20. The task of redistricting and reapportioning legislative bodies is traditionally a legislative function which federal courts should make every effort not to preempt. *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978). The Court, therefore, upon finding a violation of Section 2 of the Voting Rights Act of 1965, as amended, and of the Fourteenth Amendment of the United States Consti-

tution, afforded the Board of Supervisors of the County of Los Angeles a reasonable opportunity to meet constitutional requirements by adopting a substitute plan.

21. The rationale for deferring to state legislators, as enunciated by the Supreme Court in *Connor v. Finch*, 431 U.S. 407, 415 (1977), is that a state legislature is "by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality." By contrast, federal courts "possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name." *Id.*

22. However, the Supreme Court has made clear that "when those with legislative responsibilities do not respond," *Wise*, 437 U.S. at 540, or when a legislature fails "constitutionally to reconcile . . . conflicting state and federal goals," *Finch*, 431 U.S. at 415, a federal court is left with the "unwelcome obligation" of performing in the legislature's stead . . ."

23. Counsel for the County argues that the singular task before the Board of Supervisors was to create a majority Hispanic voting age citizen district. Having done so, the County maintains that the plan must be accepted by the Court in accordance with *Thornburg v. Gingles*, 478 U.S. 30 (1986).

24. This Court, however, is unable to construe the task at hand so simply or to read *Gingles* so narrowly as to conclude that the plan proposed provides a full and complete remedy to the violations set forth in the Court's Order of June 4, 1990. The comments in the Senate Report concerning the 1982 amendments to the Voting Rights Act adopt:

[t]he basic principle of equity that the remedy fashioned must be commensurate with the right that has been violated . . . The court should exercise its traditional equitable powers to fashion the relief so that it completely remedies the prior

dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice.

S.Rep.No. 97-417, 97th Cong.2d Sess. 28, 31 ("S.Rep."). See also *Louisiana v. United States*, 380 U.S. 145, 154 (1965) (finding that district court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future).

25. The problems presented to the Court by this case are not solved by a uniform formula. "[I]t is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme under the Equal Protection Clause." *Roman v. Sincock*, 377 U.S. 695, 710 (1964). Rather, in determining the appropriateness of a remedial plan, the Court should consider the totality of the circumstances. The Senate Judiciary Committee majority report accompanying the bill that amended Section 2 of the Voting Rights Act of 1965 sets forth a flexible, fact-intensive test for determining Section 2 violations.

"The question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality' and on a 'functional' view of the political process."

S.Rep. at 30 n.120. Accordingly, in *Ketchum v. Byrne*, 740 F.2d 1398, 1412 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985), the Seventh Circuit rejected a remedial plan because the minority populations in the wards established to remedy the violation did not exceed a mere majority of the voting age population. The court found that the district court had failed to consider all of the factors present such as low voter registration and turnout and concluded that it was appropriate under the circumstances of that case for the district court to use a supermajority of total or voting age population to define a minority ward. *Id.* at 1413. The court reasoned that "[t]here is simply no point in providing minorities

with a 'remedy' for the illegal deprivation of their representational rights in a form which will not in fact provide them with a realistic opportunity to elect a representative of their choice." *Id.*

IV. *The Adoption of the Proposed Plan*

26. The announcement by Supervisor Schabarum that he would not run for reelection in March 1990 created an open seat in District 1.

27. District 1 contains over 196,000 of the registrants in the Hispanic Core, 40 percent more than any other district in the County.⁵

28. The open seat lies in the heart of the Hispanic Core.

29. Incumbent supervisors are significantly advantaged in election contests for the Board of Supervisors. Since 1960, only three incumbents have been defeated in bids to retain their seats.

30. Supervisor Schabarum characterized the incumbency advantage as the ability to raise substantially more funds than the challenger, to use his position as he sits in it to gain media attention and therefore name identification.

31. The Court finds enormous differences between running against an incumbent and for an open seat. The County should have at least considered allowing Hispanic citizens the opportunity to run for election in the open seat that had naturally developed in their neighborhoods in District 1 without judicial intervention. Instead, as the testimony of Joseph Shumate unequivocally sets forth, Supervisor Dana never instructed Mr. Shumate, in devising a remedial plan to explore alternatives, including an Hispanic district outside of Supervisor Edelman's district. There was no discussion about exploring the possibility of putting the Hispanic district in any other district than District 3.

⁵The next largest Hispanic registrant district is District 3 with 139,986 registrants, 40 percent less than District 1.

32. The Hispanic district contains a finger-like extension to Supervisor Edelman's residence in Westwood. Using 1990 PEPS data, the Edelman finger adds 96,613 persons, of whom 33.8 percent are Hispanic. In terms of 1990 registration, the extension adds 30,887 voters, of whom only 7.6 percent are Hispanic. In contrast, Supervisor Schabarum's resides in West Covina which is adjacent to the Hispanic Core. The placement of the residence of Supervisor Schabarum [sic] in the Hispanic District would have enabled each current incumbent to reside in separate districts and, effectively, would have created an open seat in the Hispanic majority district.

33. While the Court agrees with defendants that a legislative body may *consider* incumbency in fashioning a reapportionment plan, incumbency concerns must not be permitted to encroach upon configurations designed to recognize and protect minority voting strength. *Mississippi v. United States*, 490 F.Supp. 569, 583 (D.D.C. 1979), *aff'd*, 444 U.S. 1050 (1980). In *Jeffers v. Clinton*, No. H-C-89-004 (E.D. Ark. Feb. 8, 1990) (three-judge court) (1990 U.S. Dist. LEXIS 2507), the court was faced with selecting a remedial plan after finding a Voting Rights Act violation. One plan was proposed, under court order, by the Arkansas Board of Apportionment. The plaintiffs and defendant Governor Clinton objected to the Board's plan on the grounds that it failed to create a majority black district without an incumbent in East Arkansas, "the center of black population." The court agreed with plaintiffs and Governor Clinton concluding:

All other things being equal, there is nothing wrong with a desire to protect incumbents. But in the present case, all other things are not equal. The desire to protect incumbents . . . cannot prevail if the result is to perpetuate violations of the equal-opportunity principle contained in the Voting Rights Act.

Id. Additionally, the court observed that "[t]he opportunity to run for an open seat is worth at least two or three [voting age

population] percentage points." *Id.* In *Jeffers* there was no proof that defendants acted affirmatively to deprive the minority plaintiffs of an open seat that had occurred naturally in their jurisdiction. It was, rather, the failure to create such a district to which the court objected.

1. *The June 5, 1990 Primary*

34. In District 1, ten candidates vied for the open seat, three of whom were Hispanic and two of whom were black.

35. No candidate received a majority of the votes cast in the primary election in District 1. Sarah Flores, an Hispanic, received 35 percent or [sic] the vote. Judge Gregory O'Brien, an Anglo, received 22 percent of the vote. Ms. Flores and Judge O'Brien are scheduled to compete in a general election in November 1990.

36. Unique circumstances affected the outcome of the June 5, 1990 primary election for Supervisor District 1.

37. In February 1990, Supervisor Schabarum informed Judge O'Brien that he did not plan to seek reelection, encouraged him to run for the position and requested that Judge O'Brien keep the matter of the open seat to himself. The Court finds that the effort by Supervisor Schabarum to withhold disclosure of his decision not to run from the public and from his colleagues was, in part, an effort to ensure that Hispanic Congressman Esteban Torres would not become a candidate for Supervisor in District 1.

38. None of Supervisor Schabarum's fellow Board members learned of his decision not to run until after the filing deadline had passed. At that point, Congressman Torres had already filed for reelection to Congress.

39. The filing deadline for declarations of candidacy was extended for five days until March 14, 1990 pursuant to Section 23521.5 of the California Election Code.

40. Sarah Flores and Judge O'Brien filed their declarations of candidacy during the extension period.

41. Sarah Flores, an assistant chief deputy to Supervisor Schabarum, learned on March 10, 1990 that Supervisor Schabarum had failed to file for reelection by the March 9, 1990 deadline.

42. Having never run for or been elected to any public office, Sarah Flores decided to run for Supervisor in District 1 on Sunday, March 11, 1990.

43. According to the testimony of Supervisor Antonovich, he endorsed Sarah Flores in a public gathering on the evening of the filing deadline March 9, 1990 without her knowledge. Supervisor Schabarum did not endorse Ms. Flores.

44. The Court finds the testimony of Judge O'Brien regarding the statements of Supervisors Dana and Antonovich as to their reasons for endorsing Sarah Flores credible. According to Judge O'Brien's testimony, these two supervisors decided to endorse the candidacy of Ms. Flores in the belief that their support of an Hispanic candidate would favorably influence the outcome of this pending lawsuit. Specifically, Judge O'Brien testified that Supervisors Dana and Antonovich stated in separate conversations with him that the judge could be influenced by political manipulation and that if the two Supervisors backed a successful Hispanic candidate, the judge would be persuaded to dismiss the lawsuit.

45. Supervisors Dana and Antonovich denied making those statements to Judge O'Brien.

46. Supervisor Antonovich testified that he had known Sarah Flores since high school; had encouraged hundreds of individuals to run for elective office; and had never approached Ms. Flores to run for any office until after the trial of this case was underway.

47. Supervisors Antonovich and Dana co-sponsored a fund-raising dinner at the Biltmore Hotel for Ms. Flores. Proceeds from the function totalled \$250,000, more than 60 percent of the \$400,000 Ms. Flores raised and spent on her primary campaign.

48. Judge O'Brien, endorsed by Supervisor Schabarum, also raised and spent approximately \$400,000 in the primary campaign.

49. Sarah Flores and Judge O'Brien spent more on their campaigns than any of the other eight candidates.

50. In *Gingles*, 478 U.S. at 75, the Supreme Court addressed the issue of the legal significance of some minority candidates' success. The Court stated that while Section 2(b) of the Voting Rights Act provides that "[t]he extent to which members of a protected class have been elected to office . . . is one circumstance which may be considered," the Senate Report had expressly stated that the election of a few minority candidates did not necessarily foreclose the dilution of the black vote. The Committee noted that if it did, the possibility would exist "that the majority citizens might evade [§2] by manipulating the election of a 'safe' minority candidate." *Id.* citing S. Rep. at 29. The Senate Committee decided to require an "independent consideration of the record." *Id.* According to *Gingles*:

[T]he court could properly notice the fact that black electoral success increased markedly in the 1982 election—an election that occurred after the instant lawsuit had been filed—and could properly consider to what extent the pendency of this very litigation [might have] worked a one-time advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single member districting.

Id. at 76 quoting *Gingles v. Edmisten*, 590 F.Supp. 345, 367 n.27 (E.D.N.C. 1984).

51. In District 3 in the June, 1990 primary, Mr. Edelman received 75 percent of the total vote. Mr. Edelman raised \$1 million. Gonzalo Molina raised \$11,000 and received 25 percent of the vote. Mr. Molina had run for supervisor in District 3 on three prior occasions.

2. *The Legislative Process*

52. Federal courts are instructed to defer to legislative plans of apportionment, in part, because the political process of legislative redistricting typically involves the sort of give-and-take between citizens and their elected officials that federal courts are unable to achieve. *Cook v. Lockett*, 735 F.2d 913, 918-19 (5th Cir. 1984).

53. In this case, the plan approved by three members of the Board of Supervisors was prepared by a San Francisco political consultant, Joseph Shumate. Mr. Shumate never met with Supervisor Hahn or Supervisor Edelman, and his services, paid for with County funds, were never made available to either Hahn or Edelman.

54. Following the Court's ruling on June 4, 1990, a meeting was held in Supervisor Dana's office to discuss the preparation of a remedial plan. Present at this meeting were: Supervisor Dana; Don Knabe, Chief Deputy to Supervisor Dana; Ron Smith, former deputy to Supervisor Dana and the manager of Sarah Flores' campaign; Gaye Williams, a deputy to Supervisor Dana; Tom Silver, Chief Deputy to Supervisor Antonovich; Allen Hoffenblum, a political consultant and advisor to Supervisor Antonovich; and Joseph Shumate, a political consultant and former partner of Ron Smith.

55. No representative of Supervisors Hahn, Edelman or Schabarum were present at the meeting.

56. Mr. Shumate was instructed to proceed to develop a plan on the basis of a five-district plan previously drafted by Michael

Myers. The Myers Plan had fingers to Supervisor Edelman's residence and to the San Fernando Valley. District 2 had been configured to include Beverly Hills and West Hollywood. The Myers Plan can be traced back at least to February 1990.

57. The Court finds that there was no legislative "give-and-take" between the members of the Board of Supervisors yielding a plan that represented the Board's collective legislative judgment and preference for its supervisorial boundaries.

58. No public hearings were held.

59. Supervisor Dana testified that there was no time to allow for public comment. Nor was there "any obligation" to make any of it public.

60. The Court finds that Supervisors Antonovich and Dana did not seriously consider any alternative plans which differed in any major respect from the configuration for District 2 and 3 developed by Michael Myers and modified by Joseph Shumate. Supervisor Antonovich testified that he could not recall reviewing any plans during the period of June 4 through June 27 that did not include the San Fernando finger.

61. The testimony of Supervisor Antonovich that he had always instructed his staff that he would like to retain San Fernando and Pacoima in his district rather than transfer them to District 3 is inconsistent with Mr. Shumate's testimony that he was never asked by Supervisor Antonovich or any of his aides to determine if it was possible to retain the Hispanic areas in the San Fernando Valley in District 5 as an alternative to their transfer to District 3.

62. Mr. Shumate did not recall ever being provided with any of the alternative plans prepared by plaintiffs' experts.

63. The Court finds that the San Fernando finger-like extension was unnecessary and deleterious. Such an extension, designed to

incorporate majority Hispanic census tracts in the San Fernando Valley away from the Hispanic Core, resulted in the: (1) fragmentation of the majority Hispanic and growing Hispanic communities in the San Fernando Valley and (2) inclusion of non-majority Hispanic areas to form a connection with the Hispanic Core part of the district.

64. At trial, plaintiffs' experts provided extensive testimony regarding the Hispanic Core area of Los Angeles County. Plaintiffs' experts established that the Hispanic population in Los Angeles County is expanding primarily in a southeastward direction from the Hispanic Core into the San Gabriel Valley.

65. Several illustrative plans were submitted by plaintiffs during the liability phase as alternatives to the current configuration of supervisorial districts.

66. All of these plans developed, or attempted to develop, an Hispanic majority district by including the Hispanic Core. Further, the Hispanic majority district in all of the illustrative plans extended eastward to areas with increasing Hispanic populations in the San Gabriel Valley.

67. At the liability phase, the Court found that the Board of Supervisors' repeated expansion of District 3 northwest into the San Fernando Valley, instead of southeastward into the San Gabriel Valley, indicated its unwillingness to consider the pattern of growth of the Hispanic population in Los Angeles County.

3. Split Cities

68. The plan proposed by the Board splits numerous cities in the County. The Court heard a great deal of testimony to the effect that city splits are disfavored and administratively unsound. Neither the 1971 nor the 1981 redistricting plan split any cities other than the City of Los Angeles.

69. In the County Plan, 10 cities are split; 5 are majority Hispanic in population, all 5 are located in or adjacent to the Hispanic Core.

70. In political campaigns, the ability to make use of endorsements and other assistance from local elected officials as well as from community organizations located within the cities helps to minimize total campaign expenditures. This type of grassroots campaigning particularly affects candidates with limited financial resources.

71. Supervisor Schabarum testified that splitting cities divides representation, plays havoc with communities of interest and is generally not a good option.

72. The City of Compton has a population of approximately 103,000 persons and is heavily black. In the Meyers Plan drafted in February 1990, Compton was placed in District 2. That placement was consistent with the expressed desire of black community leaders in Compton in 1981. In the plan drawn by Mr. Shumate after June 4, 1990, Compton was wholly in District 2. Mr. Shumate was later instructed by Don Knabe, an aide to Supervisor Dana, to split Compton.

73. Supervisor Dana testified that if there were more time to develop a plan, Compton probably would not be split.

74. The Court finds that whatever time pressures defendants claim to have been under, the splitting of Compton and its related effect on a decline of black citizen voting age population in District 2 are not due to time constraints.

4. Inclusion of Beverly Hills and West Hollywood in District 2

75. The black population in the existing District 2 constitutes a community of interest.

76. District 2 under the 1981 plan required little or no change in its boundaries in order to achieve population equality.

77. The County Plan moves approximately 330,000 persons from District 3 into District 2 from areas including West Hollywood and Beverly Hills.

78. The Court has taken judicial notice of the socio-economic status of Beverly Hills. Beverly Hills is one of the wealthiest communities in the County and in the country. The population of Beverly Hills is less than 3 percent black.

79. Maxine Waters, Assemblywoman for the 48th Assembly District, testified that Watts is so absolutely different from Beverly Hills economically and socially, that it is hard to conceive of anyone wanting to construct a plan that includes the two in the same district, and hope for representation from someone who could serve both of those communities very well.

80. The County Plan reduces the black citizen voting age population in District 2, the district with the highest black population. Under current lines, Dr. Estrada estimated the black citizen voting age population of District 2 to be 46.7 percent. The County Plan would reduce it to 43.18 percent, a decline of 3.52 percent. Dr. Grofman testified that this change would constitute a reduction in realistic terms, *i.e.* as a percentage of black citizen voting age population rather than as a proportion of total population.

81. An Hispanic district could have been drawn without decreasing the black citizen voting age population in District 2.

82. The inclusion of Beverly Hills, West Hollywood and the 5th Councilmanic District will make it more difficult for the African American community to elect a representative of choice. While the addition of these areas will not numerically overwhelm the proposed District 2, those communities could have an overwhelming influence on the course of supervisorial elections.

83. Black voters in Los Angeles County are politically cohesive in their support of black candidates and are more likely to vote for a black candidate than a candidate of another group.

84. The collective testimony of defendant supervisors Antonovich, Dana and Schabarum, their chief deputies, and several of defendants' witnesses, clearly established that defendants, in devising their redistricting plan, gave no consideration to the critical issue of safeguarding the electoral franchise of African Americans by protecting the black citizen voting age population.

V. Conclusion

The remedial plan proposed by the Board of Supervisors of the County of Los Angeles is not commensurate with the character of the liability established at trial. The placement of an incumbent with a substantial war chest in the newly created Hispanic district without considering placement in an open seat in the heart of the Hispanic Core, coupled with the splitting of the San Gabriel Valley and the incorporation of the San Fernando finger, operate to impede the ability of the County's Hispanic voters to elect a candidate of choice. Further, the Court finds that the plan proffered by the Board unnecessarily reduces the voting strength of the African American voting population in the County and further diminishes its influence by placing in District 2 a community which has strikingly dissimilar interests.

The Court finds that the adoption of this plan was not a good faith attempt by concerned legislators to comply with this Court's June 4, 1990 Order and that the remedy fashioned by the County neither completely rectifies the prior dilution of minority voting strength nor fully provides an equal opportunity for Hispanic citizens to participate and to elect candidates of their choice to the Board of Supervisors of Los Angeles County.

A-215

For these reasons, the Court, in the interest of justice, **HEREBY REJECTS** the County's plan for its failure to provide a full and complete remedy under the Voting Rights Act.

IT IS SO ORDERED.

DATED: August 3, 1990

David V. Kenyon
United States District Judge

FILED
AUG 3 1990
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YOLANDA GARZA, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff,

vs.

COUNTY OF LOS ANGELES,
CALIFORNIA, LOS ANGELES
BOARD OF SUPERVISORS, et al.,
Defendants.

LAWRENCE K. IRVIN, et al.,
Plaintiffs-Intervenors.

CV 88-5143 KN (Ex)

CV 88-5435 KN (Ex)

ORDER

The Court **HEREBY REQUESTS** that plaintiffs prepare and lodge a proposed order which includes the following:

1. The acceptance by this Court and proposed findings re Garza Plan I including a waiver of the requirement of residence for all persons living within District 1 and District 5 who seek election in District 1 and the minor revisions required to include all parts of particular cities.
2. The decision to hold a special election on November 6, 1990 and the reasons therefore as well as a proposed schedule for the conduct of such elections.

3. The injunctive and declaratory relief requested with respect to the run-off election in District 1 currently scheduled for November 6, 1990.

IT IS SO ORDERED.

DATED: August 3, 1990

David V. Kenyon
United States District Judge

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

YOLANDA GARZA, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff,

vs.

**COUNTY OF LOS ANGELES,
CALIFORNIA, LOS ANGELES
BOARD OF SUPERVISORS, et al.,**
Defendant.

LAWRENCE K. IRVIN, et al.,
Plaintiffs-Intervenors.

No. CV 88-5143 KN
(Ex)

No. CV 88-5435 KN
(Ex)

AMENDED ORDER

The Court **HEREBY AMENDS** the Order issued August 3, 1990 as follows:

1. The acceptance by this Court and proposed findings re Garza Plan I including a waiver of the requirement of residence for all persons living within the present District 1 who wish to seek election in the new District 1 but do not reside in the new District 1, and the minor revisions required to include all parts of particular cities.

IT IS SO ORDERED.

DATED: August 3, 1990

David V. Kenyon
United States District Judge

A-219

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES—GENERAL

Date August 6, 1990

Case No. CV 88-5143; CV 88-5435KN

Title Yolanda Garza, *et al.*, etc. v. County of Los Angeles, *et al.*

DOCKET ENTRY

PRESENT:

HON. DAVID V. KENYON, JUDGE

Lenora Wallace
Deputy Clerk

None
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

None

PROCEEDINGS:

IN CHAMBERS:

The Court has received and considered defendants' Motion for a Stay of the Injunction Pending Appeal filed August 3, 1990. The Court **HEREBY DENIES** defendants' motion.

IT IS SO ORDERED.

Initials of Deputy Clerk LW

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

YOLANDA GARZA, et al.,
Plaintiffs—Appellees,

vs.

COUNTY OF LOS ANGELES, et al.,
Defendants—Appellants.

UNITED STATES OF AMERICA,
Plaintiff—Appellee,

and

LAWRENCE K. IRVIN, et al.,
Intervenors—Appellees

v.

COUNTY OF LOS ANGELES, et al.,
Defendants—Appellants.

COUNTY OF LOS ANGELES, et al.,
Petitioners

v.

**UNITED STATES DISTRICT
COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA,**

Respondent,

and

YOLANDA GARZA, et al.,
Real Parties in Interest.

FILED

AUG 9, 1990

**CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS**

No. 90-55944

**DC# CV 88-05143 Kn
Central California**

No. 90-55945

**DC# CV-88-05435 KN
Central California**

No. 90-71288

**DC# CV-88-05143-Kn
DC# CV-88-05435-KN
Central California**

ORDER

Before: NELSON, BEEZER and KOZINSKI, Circuit Judges

The County of Los Angeles and the other appellants in appeals nos. 90-55944 and 90-55945 (collectively "the County") have filed a "motion or petition" to stay in docket no. 90-70288. Be-

cause of the pending appeals, the County may not obtain relief by mandamus. Accordingly, the stay motion and all subsequent filings in this matter have been transferred to the appeals dockets. No further filings shall be accepted in no. 90-70288.

The Garza plaintiffs/appellees have filed a motion to have the stay application considered by another panel. This motion is denied.

The Clerk shall schedule oral argument on the application for a stay pending appeal for the morning of August 16, 1990, in San Francisco. The parties shall be notified by telephone of the exact place and time of the argument. The district court's order of August 6, 1990, is stayed pending disposition of the stay application. Unless extended by this panel, the stay shall expire on August 17, 1990.

Regardless of this panel's decision on the application for a stay, these appeals will be considered on an expedited basis and consolidated for purposes of briefing and argument. The requirement that the appellants file a civil appeals docketing statement is waived and the appeals are released from the pre-briefing conference program. Appellants shall secure the filing of the certificate of record as soon as possible.

Appellants' opening brief is due August 31, 1990. Appellees' briefs are due September 14, 1990. Appellants' optional reply brief, if any, is due September 21, 1990. Principal briefs by the parties shall not exceed 75 pages and the reply brief shall not exceed 40 pages; amicus briefs shall not exceed 25 pages. Motions for additional pages are strongly discouraged and shall be granted only for the most compelling reasons. All briefs shall be served by hand or by overnight delivery service. No extensions of time shall be given. Any party who has participated as amicus before the district court or this court may file an amicus brief in these appeals; any motion to file an amicus brief by additional parties

shall be referred to the panel that considers these appeals on the merits. Amicus briefs are due at the same time as the principal brief of the party the amicus is supporting.

The Clerk shall calendar these appeals for argument before a regularly scheduled merits panel sitting in Pasadena during the week of October 1, 1990.

DECLARATION OF DR. WILLIAM A. V. CLARK

I, William A.V. Clark, hereby declare as follows:

1. I have personal, first hand knowledge of the facts stated in this declaration and, if called to testify, could and would testify thereto.

2. I am Chairman of the Geography Department at UCLA, I am a professional demographer, and was an expert witness in the trial proceedings in this case.

3. Attached as Exhibit "A" hereto is a list of the 46 cities in Los Angeles County filing challenges with the Census Bureau to the 1990 preliminary Census count. I have designated each of these cities with the number of the supervisorial district in which they have been placed in the Garza remedial plan adopted by the district court.

4. I have reviewed the County's submittal to the Census Bureau. The block level changes requested all would result in increasing the number of people in the blocks in question, never for the purpose of decreasing the number. That means the County's submittal to the Census Bureau will not change the fact that PEPS greatly underestimated the population in District 5.

5. I have also reviewed all challenges filed with the Census Bureau of the preliminary census counts for Districts 1 and 5. These challenges were filed by 14 cities in District 5, by 5 cities in District 1, by the City of Los Angeles, parts of which are in both Districts 1 and 5 and by the County of Los Angeles. I then modified the population numbers reported in my previous declaration to incorporate these challenges to the Census Bureau preliminary lists of housing units and population in group quarters. Assuming all challenges are validated and using the persons per dwelling factor previously calculated, I find that the population numbers for Districts 1 and 5 (the most divergent districts based on the 1990 PEPS projected populations) are similar to those previously reported. The revised population estimate for District 1 is 1,497,951 persons which is - 16.8 percent different from the 1990 PEPS reported number. The revised population estimate for

District 5 is 2,059,293 persons which is 15.4 percent different from the PEPS reported number. There is a 561,342 person difference between Districts 1 and 5.

<u>District</u>	<u>Initial Population from Preliminary Counts</u>	<u>Est. of Population From Challenges</u>	<u>Modified Population</u>
1	1,456,565	41,386	1,497,951
5	2,031,998	27,295	2,059,293

6. There was a question as to how I derived population per housing unit for unincorporated areas of the County. The mathematical calculation utilized city population data where available and for tracts in unincorporated areas and the portion of Los Angeles city in each district the count of housing units was multiplied by a population per housing unit factor. Population data for tracts in Los Angeles city (which may be in any of the districts) and for county unincorporated tracts were estimated by taking the number of housing units in that tract subtracting vacant units and multiplying by a population per housing unit factor and adding the population in group quarters. The factors were developed by calculating the persons per unit for the cities in the county (city population less population in group quarters and then divided by the number of units to estimate a persons per unit factor). The nearest city with the highest person per unit was used to estimate unincorporated tract populations. Tracts in Los Angeles City in the San Fernando Valley were assigned the Los Angeles City rate of 2.59, the tracts in Los Angeles city in the Santa Monica Mountains were assigned the Beverly Hills rate, the portions of District 2 which are adjacent to district 1 and Los Angeles City in District 1 were assigned the higher Montebello rate of 3.06. Tracts in Los Angeles city adjacent to Inglewood were assigned the Inglewood.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the above is true and correct.

Executed on October 3, 1990 at Los Angeles, California.

Dr. William A.V. Clark

EXHIBIT "1"
(TO CLARK DECLARATION)
LOS ANGELES COUNTY GOVERNMENTS
CHALLENGING THE PRELIMINARY CENSUS COUNT

County of Los Angeles

3 Agoura Hills City	1 Maywood
5 Azusa city	5 Monrovia
1 Bell	1 Monterey Park
1 Bell Gardens	5 Palmdale
5 Bradbury City	4 Palos Verdes Estates
2 Carson	5 Pomona
4 Cerritos	5 Pasadena
5 Claremont	1 Pico-Rivera
2 Compton	4 Rancho Palos Verdes
5 Covina	4 Redondo Beach
2 Culver City	4 Rolling Hills
4 El Segundo	5 San Dimas
2 Gardena	3 San Fernando
5 Glendale	5 San Gabriel
4 Hermosa Beach	5 Santa Clarita
1 Huntington Park	3 Santa Monica
2 Inglewood	5 Sierra Madre
5 Canada/Flintridge	5 Temple City
4 Lakewood	4 Torrance
4 La Mirada	3 West Hollywood
4 Long Beach	3 Westlake Village
All Los Angeles	4 Whittier
2 Lynwood	

FILED

CLERK, U.S. DISTRICT COURT

JUN 7 1990

CENTRAL DISTRICT OF CALIFORNIA

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Attorneys for Defendants

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

YOLANDA GARZA, et al.,

Plaintiffs,

**UNITED STATES OF
AMERICA,**

Plaintiff,

vs.

**COUNTY OF LOS
ANGELES, CALIFORNIA,
LOS ANGELES BOARD OF
SUPERVISORS, et al.,**

Defendants.

LAWRENCE K. IRVIN, et al.,

Plaintiffs-Intervenors

No. CV 88-5143 Kn (Ex)

No. CV 88-5435 KN (Ex)

**DEFENDANTS' SECOND
REQUEST FOR JUDICIAL
NOTICE**

Date: June 7, 1990

Time: 3:15 p.m.

Place: The Honorable David
V. Kenyon

Courtroom 3

312 N. Spring Street

Los Angeles, CA

90012

Pursuant to the provisions of Federal Rule of Evidence 201, the defendants request that the Court take judicial notice of the following facts:

1. In the June 5, 1990 primary election involving the District 1 seat on the Los Angeles County Board of Supervisors, Sarah Flores received the highest total votes of any of the ten candidates in the election. Ms. Flores received 68,266 votes or 34.69% of the votes cast. Gregory O'Brien received the second highest vote total in this election; 39,534 votes or 20.09% of the total votes cast. In support of the request for notice of these facts, the defendants submit the County of Los Angeles Registrar-Recorder's "Semi-Official Election Returns June 5, 1990 Primary Election," a true and correct copy of which is attached as Exhibit A hereto.

DeWitt W. Clinton, Esq.
County Counsel of Los Angeles
Mary Wawro
Senior Assistant County
Counsel

McDERMOTT, WILL &
EMERY

John E. McDermott, Esq.
Richard K. Simon, Esq.
Lee L. Blackman, Esq.

DATED: June 6, 1990

By _____
John E. McDermott
Attorneys for defendants

FILED
OCT 31 1989
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YOLANDA GARZA, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**COUNTY OF LOS ANGELES,
CALIFORNIA, LOS ANGELES
BOARD OF SUPERVISORS, et al.,**

Defendants.

LAWRENCE K. IRVIN, et al.,

Plaintiff-Intervenors.

CV 88-5143 KN (Ex)

CV 88-5435 KN (Ex)

ORDER Re (1) Motion
for Summary Judgment
on Common Section 2
Claims; (2) Motion for
Summary Judgment on
Garza Plaintiffs' Second,
Third and Fourth Claims
for Relief; (3) Motion to
Dismiss on the Grounds
of Mootness and Laches;
(4) Motion to Strike; and
(5) Motion to Continue
Trial and Reopen
Discovery

The Court, having received and considered defendants' motions and the papers filed in support thereof and in opposition thereto and having heard oral argument on these motions on October 26, 1989, HEREBY GRANTS defendants' motion to reopen discovery and HEREBY DENIES the other motions.

Procedural Background

These related actions challenge section 2 of the Voting Rights Act (hereinafter referred to as "the Act"). In Yolanda Garza, et

al. v. County of Los Angeles, et al., CV 88-5143, the plaintiffs (hereinafter referred to as the "Garza plaintiffs") seek a declaratory judgment that the 1981 supervisorial redistricting plan for the Los Angeles County Board of Supervisors violates the Act as well as the Fourteenth and Fifteenth Amendments to the United States Constitution. The Garza plaintiffs also seek a permanent injunction enjoining the further use of this election system. Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23(b)(2) on their own behalf and on behalf of all Hispanic citizens whose right to vote has been or will be abridged by the adoption and maintenance of the 1981 supervisorial redistricting plan used for the elections of the Los Angeles County Board of Supervisors. Plaintiffs, Yolanda Garza, Salvador Ledezma, Raymond Palacios, and Guadalupe de la Garza are registered voters in Los Angeles County and are residents of supervisorial districts one through four respectively.

Defendants are the County of Los Angeles (hereinafter referred to as "the County"); the Board of Supervisors of the County; Deane Dana, Board Chairman; Peter Schabarum, Kenneth Hahn, Edmund Edelman and Michael Antonovich, elected members of the Board of Supervisors. Each supervisor is sued in his official capacity. Additional defendants in this action are Richard Dixon, County Administrative Officer and Frank Zolin, County Clerk/Executive Officer.

The Garza plaintiffs' complaint alleges that according to the 1980 census, the population of defendant County was 7,477,503. Of this population 27.6% were Hispanic (2,066,103); 12.6% were Black (943,968); and 5.8% were Asian or Pacific Islanders (434,850). The census also revealed that the Hispanic population in the County is "concentrated in geographically identifiable areas" and that the Hispanic population is large enough to form a "majority Hispanic district." Garza Complaint, ¶¶ 14, 15.

The Garza complaint further states that there has been a history of official discrimination in State of California and in Los

Angeles County that has denied the Hispanic community equal access to the political process. The redistricting plan adopted by the Board of Supervisors in 1981 allegedly fragmented the voting strength of the Hispanic community and affected Hispanic voters residing in these districts. In adopting this plan, plaintiffs maintain the County was aware of the low voter registration and election participation rates of the Hispanic community and knew that the plan would fragment the community and result in unequal opportunity to participate in the political process and to elect representatives of their choice. Garza Complaint, ¶ 20.

The complaint alleges that the redistricting plan had a discriminatory effect on the voting strength of plaintiffs and the Hispanic community as a whole; that the plan was adopted for a discriminatory purpose; that the Hispanic community is politically cohesive; and that the 1981 redistricting plan constitutes a voting standard practice or procedure under 42 U.S.C. Section 1973. Garza Complaint ¶ [sic] 28-31.

In *United States v. County of Los Angeles, et al.*, CV 88-5435, the Attorney General on behalf of the United States brings a related action against the same defendants as the Garza action with the addition of Charles Weissburd, Registrar-Recorder of Los Angeles County. As with the other named defendants, Mr. Weissburd is sued in his official capacity. The claim of the United States ("U.S."), based on alleged factual circumstances summarized below, is that the governance and election plan for the Board of Supervisors results in the denial and abridgement of the right to vote in violation of Section 2 of the Act, as amended. U.S. Complaint ¶ 17. The complaint further states that it is within the Board's power to remedy the fragmentation of Hispanic voting strength occasioned by the 1981 redistricting even without voter approval and that the Board has failed to take the action necessary to allow Hispanic citizens a fair opportunity for equal political participation. U.S. Complaint ¶ 18.

On March 21, 1989, the National Association for the Advancement of Colored People ("NAACP") filed a complaint in intervention on behalf of the following plaintiff-intervenors: Lawrence Irvin, Rev. James Lawson, Jr., John T. McDonald, Jr. and Ernestine Peters, all black citizens and registered voters in Los Angeles County; the Los Angeles Branch of the NAACP; the Southern Christian Leadership Conference; and the Los Angeles Urban League. This class of plaintiffs are intervening on behalf of all black citizens in Los Angeles County whose right to vote has been or may be denied by the electoral system now in place. NAACP Complaint in Intervention, ¶ 19.

Factual Background

The County of Los Angeles is governed by a five member Board of Supervisors. Each Board member serves a four-year term. Staggered elections for the Board of Supervisors are held every two years. Districts 1 and 3 will be the subject of elections in 1990 while Districts 2, 4 and 5 will elect their supervisors in 1992. The five members of the Board are elected from single-member districts. Each supervisor represents approximately 1.5 million persons, a figure, as the U.S. Complaint points out, three times the number of persons represented by a member of the United States House of Representatives. U.S. Complaint ¶ 8.

During the period from 1970 to 1980, the County increased the number and percentage of Hispanic residents. The 1970 Census indicated that the population of Los Angeles County was 7,032,075 of whom 18% (1,289,311) were Hispanic. By the 1980 Census, the population had grown to 7,477,503 of whom 27.6% were Hispanic (2,066,103).

Under state law, the Los Angeles County Board of Supervisors is required before the first election following a decennial federal census, to revise its supervisorial election district boundaries to the extent necessary to ensure population equality among the

districts "using population . . . as a basis." Cal.Elec.Code § 35000 (West 1989). In addition, the Board may "[a]t any time between the decennial adjustments of district boundaries . . . adjust the boundaries of the supervisorial districts . . . on the basis of population *estimates*." Cal.Elec. Code § 35003 (West 1989) (emphasis added). State law also identifies permissible redistricting criteria:

In establishing the boundaries of the districts, the board may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness, continuity, integrity, and compactness of territory, and (d) community of interests of the districts.

Cal.Elec.Code § 35000 (West 1989)

The Los Angeles County Charter provides that: The Board of Supervisors may, by a two-thirds' vote of its members, change the boundaries of any supervisorial district. *No such boundaries shall ever be so changed as to affect the incumbency in office of any supervisor.* Any change in the boundaries of any supervisorial district must be made within one year after a *general election*.

Charter of the County of Los Angeles, Art. II, Sec. 7 (1985) (emphasis added).

I. Motion for Summary Judgment on Common Section 2 Claims

Defendants move this Court for an order granting summary judgment on the grounds that both the Garza plaintiffs and the United States cannot prove that in 1981 Hispanics could have formed a majority of the voting age citizens in any district of a five district system containing districts with equivalent population. Defendants argue that it is undisputed that Hispanics could not have met this necessary precondition in 1981. Defendants further contend that since the County is not constitutionally required to redistrict itself more than decennially, the evidence concerning population growth subsequent to the Board's adoption of the 1981 plan is without relevance.

The United States alleges in its complaint that if nondiscriminatory plan-drawing criteria is followed, Hispanics *would* constitute a significant voting age majority of the population in one of the resulting five districts. U.S. Complaint ¶ 13. The U.S. Complaint further asserts that nonpartisan elections for positions on the Board of Supervisors, are characterized by patterns of racial and ethnic block voting. *Id.* at ¶ 14. No Hispanic person, and no black or Asian-American person, ever has been elected to the Board of Supervisors or any county-wide office in Los Angeles County. *Id.*

The United States agrees that to prevail they must offer proof that Hispanic citizens would have the potential to elect a supervisor of their choice under an alternate election plan. United States' Memorandum of Points and Authorities in Opposition to Defendants' Motion for Summary Judgment on Common Section 2 Claims at 3. To demonstrate that potential, plaintiffs present alternate redistricting plans that, like the challenged plan, have five districts and allegedly comply with the one person, one vote requirement of the Fourteenth Amendment. The U.S. maintains that their plan, referred to as the "Grofman Plan," created by an expert with the same name, would give Hispanic citizens the potential to elect a supervisor of their choice in District 3. The Garza plaintiffs use their own expert and devise what will be referred to as the "Estrada Plan" to achieve the same result.

A. *Geographical Compactness*

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the North Carolina General Assembly enacted a legislative redistricting plan for the State's Senate and House of Representatives. Plaintiffs, black registered voters, brought suit in federal district court challenging one single-member district and six multi-member districts on the ground that the plan impaired black citizens' ability to elect representatives of their choice in violation of section 2 of the Act. After plaintiffs brought suit but before trial, section 2 of the Act

was amended to make clear that a violation could be proved by showing discriminatory effect alone without showing discriminatory purpose and to establish as the relevant legal standard the "results test." *Thornburg*, 478 U.S. at 35.

Section 2(a) of the Act prohibits a State or political subdivision from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures that result in the denial or abridgement of the right of any citizen to vote on account of race or color. 96 Stat. 134. Section 2(b) of the Act provides that section 2(a) is violated where the "totality of circumstances" reveals that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice," and that the extent to which members of a protected class have been elected to office is one circumstances that may be considered. *Id.*

The district court, applying the "totality of circumstances" test set forth in section 2(b) of the Act, held that the redistricting plan violated section 2(a) because it resulted in the dilution of black citizens' votes in all of the disputed districts. *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984) (three judge panel), *aff'd in part and rev'd in part sub nom, Thornburg v. Gingles*, 478 U.S. 30 (1986). The Supreme Court on direct appeal from the Attorney General held that the district court had carefully considered the totality of the circumstances and found that in each district racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice acted in concert with the multimember districting scheme to impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process. *Thornburg*, 478 at 80.

The Senate Report which accompanied the 1982 amendments to section 2 elaborated on the nature of section 2 violations and on the proof required to establish these violations. The Report specifies factors which typically may be relevant to a section 2 claim: (1) the history of voting-related discrimination in the State or political subdivision; (2) the extent to which voting in the elections of the State or political subdivision is racially polarized; (3) the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; (4) the exclusion of members of the minority group from candidate slating processes; (5) the extent to which minority group members bear the effects of past discrimination in areas such as education, employment and health, which hinder their ability to participate effectively in the political process; (6) the use of overt or subtle racial appeals in political campaigns; (7) the extent to which members of the minority group have been elected to public office in the jurisdiction. *Thornburg*, 478 U.S. at 45 quoting S. Rep. 28-30.

The Supreme Court noted the Senate Committee had explicitly stated that there was no requirement that any particular number of factors be proved, or that a majority of them point one way or the other. *Id.* The Senate Committee determines that "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of 'past and present reality,' " and "on a functional view of the political process." (emphasis added). *Id.*

As a threshold matter, however, the Court in *Thornburg* concluded that in order for multimember districts to operate in such a way to impair minority voters' ability to elect representatives of their choice, the minority group must demonstrate: (1) that it is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) that it is politically cohesive;

(3) that the white majority votes sufficiently *as a bloc* to enable it, in the absence of special circumstances, such as the minority candidate running unopposed, usually to defeat the minority's preferred candidate. *Id.* at 51. (emphasis added)

Defendants' primary contention is that plaintiffs under any experts' proposed redistricting plan fail to comport with the *Thornburg* geographical compactness requirements. As a matter of law, defendants argue that only population data concerning conditions at the time the plan was adopted are relevant and that the majority standard applies to the citizen voting age population.

(1) *Population Data*

Defendants maintain that this case is indistinguishable from *McNeil v. Springfield Park District*, 851 F.2d 937 (7th Cir. 1988), in which the most concentrated black districts that could be drawn for the park system and the school system were 50.04% and 50.2% respectively in total population. Summary judgment was granted because these districts were but 43.7% and 43.2% in voting age population and therefore did not satisfy the *Thornburg* geographical compactness test. The court in *McNeil* rejected appellants' contention that a court, in considering section 2 claims, must explore the totality of the circumstances without first determining whether the *Thornburg* threshold criteria are met. *Id.* at 943.

In *McNeil*, plaintiffs maintained that their proposed single-member district contains a black voting age majority because of population growth since the 1980 census. *Id.* at 946. The court found two problems with this argument: First, the court faulted plaintiffs for never raising it at the district court level. Secondly, the court found that the census is presumed accurate until proven otherwise and that proof of changed figures must be clear and convincing to override the presumption. *Id.* The court concluded that plaintiffs failed to provide any concrete evidence to rebut the presumption in favor of the census. *Id.*

According to plans submitted by the U.S. and the Garza plaintiffs, relying on post-1980 demographic data utilized by the County, a district can be created by which Hispanics constitute a majority of those eligible to vote. Based on current citizen voting age estimates, Hispanics currently comprise a majority (approximately 55%) of the citizen voting age population. Since 1980, the Hispanic population has experienced dramatic growth. The total Hispanic population has increased by about 43 percent, while the white population has decreased by about 9.5 percent. O'Hare Decl. 16-19.

As the Court stated in *McNeil*, proof of changed figures must be clear and convincing to override the presumption in favor of the census. 851 F.2d at 946. Employing the language of *Thornburg* that a court must consider "past and present reality," the Court agrees with the U.S. and the Garza plaintiffs that, at a minimum, plaintiffs have raised a genuine issue of material fact as to whether the County planning and voter registration data relied upon by plaintiffs' experts are more reliable than the 1980 census for assessing post-1980 County populations and whether this current data should be used to satisfy the geographical compactness requirement under *Thornburg*.

(2) Citizen Voting Age Population

In *Romero v. City of Pomona*, F. 2d , CV 87-6326, slip op. (9th Cir. Aug. 24, 1989), the Ninth Circuit affirmed the district court's granting of a motion for involuntary dismissal holding that the eligible minority voter population, rather than total minority population, is the appropriate measure for determining geographical compactness required for a section 2 claim under the Voting Rights Act. The Ninth Circuit found that plaintiffs mistakenly interpreted *Thornburg* by using the total minority population rather than the "effective voting majorities" to determine geographical compactness. *Romero*, slip op. at 10063. In a footnote, the Ninth Circuit noted that raw population totals are

relevant only to the extent that they reveal whether the minority group constitutes an effective voting majority in a proposed single-member district given such factors as low voter registration and turnout patterns. *Id.* at n.13. The Ninth Circuit also ruled that the three requirements of *Thornburg* must be met in order to succeed on a section 2 claim. *Id.* at 10067. In accordance with *Romero*, therefore, the Court agrees with defendants that the citizen voting age population is the appropriate measure in determining geographical compactness.

B. Decennial Redistricting

In *Reynolds v. Sims*, 377 U.S. 533, 583 (1964), the Supreme Court stated that "decennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growths." Defendants maintain that in accordance with *Reynolds*, the County cannot be compelled to redistrict before 1991 absent a determination that the 1981 plan was invalid when adopted. Defendants' Memorandum of Points and Authorities in Support of Motion for Summary Judgment at 13. The Supreme Court in stating that decennial redistricting was a constitutional minimum stated specifically that it did not intend to intimate that more frequent reapportionment would not be constitutionally permissible. *Id.* at 584. Rather, if reapportionment were accomplished with less frequency than every ten years it would "assuredly be constitutionally suspect." *Id.*

The legislative intent of section 2 of the Act would be obviated if a violation could not be rectified for the entire ten year period. Clearly, the language of the California Election Code indicates, that while decennial districting may be the standard procedure, the Board may "[a]t any time between the decennial adjustments of district boundaries . . . adjust the boundaries . . . on the basis of population estimates." Cal. Elec. Code § 35003 (West 1989). While the Court considers redistricting more frequently than

decennially to be an extraordinary remedy, the Court finds that upon sufficient proof of section 2 violations, the County of Los Angeles may be so compelled.

For the foregoing reasons, summary judgment on plaintiffs' common section 2 claims is **HEREBY DENIED**.

II. Motion for Summary Judgment on Garza Plaintiffs Second, Third and Fourth Claims for Relief

Defendants maintain that the Garza plaintiffs second claim, that the County's 1981 redistricting plan was adopted for a discriminatory purpose and the third claim, that the plan was adopted for the purposes of diluting, minimizing, and cancelling out Hispanic voting strength must be dismissed because the undisputed facts demonstrate that plaintiffs cannot satisfy the threshold "results" criteria set forth in *Thornburg*. In denying the motion for summary judgment on plaintiffs common section 2 claims, that material facts in dispute with respect to geographical compactness also preclude granting summary judgment on these claims. Moreover, the Court agrees with plaintiffs that the test for a Fourteenth Amendment violation is not the same as that required for a section 2 claim. *See City of Mobile v. Bolden*, 446 U.S. 55 (1985) (stating that in order to demonstrate equal protection violation it must be shown that a governmental body conceived of or operated purposeful device to further racial discrimination).

Further, the Court **HEREBY DENIES** summary judgment on the Fifteenth Amendment claims in the Garza plaintiffs' third and fourth causes of action. Defendants, in bringing this motion, submit that the Fifteenth Amendment is not relevant to a question of ethnic vote dilution unless the claim concerns the purposeful denial of minority rights to register to vote and cast ballots. As the Supreme Court noted in *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964), quoting *South v. Peters*, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting):

There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted . . . It also includes the right to have the vote counted at full value without dilution or discount

The Court is unwilling to read the Fifteenth Amendment so narrowly as to include only those claims which involve "actual interference in the voting or registration process." Defendant's Memorandum of Points and Authorities in Support of the Motion for Summary Judgment at 10. The Court believes that plaintiffs should be given an opportunity to demonstrate their claim that the 1981 redistricting plan resulted in the denial and abridgement of plaintiffs' right to vote as well as the rights of the class they seek to represent. Hence, summary judgment is **HEREBY DENIED** on the Garza plaintiffs' Fifteenth Amendment claims.

The Court also **DENIES** summary judgment on the Garza plaintiffs' fourth claim that Article II, Sections 4 and 5 of the Los Angeles County Charter, restricting the number of Los Angeles County supervisorial districts to five (5), constitutes a voting standard which results in the denial and abridgement of plaintiffs' right to vote as well as the rights of the class they seek to represent. It is defendants' contention that this claim must be dismissed because there is no constitutional or Voting Rights Act basis for asserting that the chosen number of representatives is improperly small.

The Supreme Court in *Thornburg*, 478 U.S. at 44-45, citing S. Rep. at 28-29, identified as a factor typically relevant to a section 2 claim "the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts." *See also Cruz Gomez v. City of Watsonville*, 863 F.2d 1407, 1417 (9th Cir. 1988), *cert. denied*, 109 S. Ct. 1769 (1989) (characterizing unusually large districts as disfavored voting procedure under section 2 of Act). It is the

Court's belief that in accordance with the Act and the Constitution it may find that the size of Los Angeles County minimizes the voting strength of Hispanic citizens. Moreover, the question as to whether this Court possesses equitable authority to remedy a section 2 violation or a violation of the Fourteenth and Fifteenth Amendments by ordering enlargement of the number of districts properly awaits the remedy stage of this litigation. Summary judgment on the Garza plaintiffs' fourth claim for relief is **HEREBY DENIED**.

III. Motion to Dismiss

The Court **HEREBY DENIES** defendants' motion to dismiss on the grounds of mootness and laches. As to mootness, the cases cited by plaintiffs indicate that a federal court is empowered to modify election schedules to effect its broad equitable remedies. Thus, this Court finds that it may, if the need arises, alter the deadlines set forth by the affiants in support of defendants' motion, shorten the term of the incumbents in the 1990 election or order any additional relief required.

The Court also finds that laches is not a proper ground for dismissal in this case. Specifically, the Court finds that defendants have not been prejudiced by the filing of this action in August of 1988. Defendants' familiarity with special elections and past modifications of pre-election deadlines makes it clear that the alteration of such deadlines in this instance would not constitute sufficient prejudice to dismiss the action. Furthermore, this Court has serious doubts as to whether the defense of laches is applicable against the United States or in a situation where continuing violations of the Act are alleged. Defendants' motion to dismiss on these grounds is **HEREBY DENIED**.

IV. Motion to Continue Trial Date and Reopen Discovery

The Court **HEREBY DENIES** the motion to continue the trial and **HEREBY GRANTS** defendants' motion to reopen discovery

to allow defendants to depose the nine experts whose declarations were filed regarding the motion for summary judgment. These include and are limited to: United States' experts Dr. Grofman, Dr. Lichtman, Dr. O'Hare and Dr. Robinson; Garza Plaintiffs' experts Dr. Estrada and Dr. Kousser; and Defendants' Experts Dr. Clark, Dr. Klein and Dr. Seigel. It does not seem unreasonable to expect that these depositions can be completed between November 1, 1989 and November 17, 1989. The trial will commence on November 21, 1989 at 8:00 a.m.

V. Motion to Strike Plaintiffs' Experts' Declarations

The Court HEREBY DENIES defendants' motion. Allowing discovery to be reopened for the limited purpose of deposing these experts eliminates, in the Court's mind, the need to strike these declarations. The Court does not find that plaintiffs' analysis of partisan elections, the development of an alternative redistricting plan and the estimation of the number of Spanish-origin registered voters reaches the level of unfair surprise to justify removing these declarations from consideration for the purpose of these motions.

IT IS SO ORDERED.

DATED: October 31, 1989

David V. Kenyon
United States District Judge

INITIAL REPORT OF LEOBARDO F. ESTRADA

1. I have been an Associate Professor of Urban Planning in the Graduate School of Architecture and Urban Planning at the University of California, Los Angeles since 1977.

2. I have a masters and doctorate degree in sociology with a specialty in demographic studies from Florida State University. I have been employed at North Texas State University, the University of Texas at El Paso, the Institute of Social Research at the University of Michigan at Ann Arbor and at U.C.L.A. I also worked at the U.S. Bureau of the Census in Suitland, Maryland, as Special Assistant to the Chief of the Population Division from 1975-1977, and as Staff Assistant to the Deputy Director from 1979 to 1980. I specialize in the study of and methods used to measure ethnic racial populations of the United States.

3. Counsel for the plaintiffs asked me to:

a. review patterns of Hispanic population growth in Los Angeles County;

b. identify whether a Hispanic supervisorial district can be drawn which meets the necessary criteria;

c. review population projections by race and ethnicity in Los Angeles County;

d. compare the socioeconomic status of Hispanic and non-Hispanics in Los Angeles County; and

e. review attitudinal studies conducted in Los Angeles County which reflect intergroup differences in perceived treatment and describe results of attitudinal surveys of the non-Hispanic population toward Hispanics.

SUMMARY

4. My findings show that prior and present supervisorial district lines have fragmented the major core of geographically concentrated Hispanic population of Los Angeles County. It is possi-

ble to construct a supervisorial district around this core concentrated Hispanic population which meets the criteria of a majority population 18 years and older. Additional analysis indicates that this "Hispanic district" also has a majority population 18 years and older who are citizens. Population estimates and projections by race and ethnicity support the trends for this constructed "Hispanic district" to further increase its number and proportion of Hispanic population. The results also indicate that the Hispanic population shows lower levels of socioeconomic status along several indicators than the non-Hispanic population. As measured by survey methods, the Hispanic population of Los Angeles County perceives high levels of discrimination against them by non-Hispanics.

RESULTS

5. As the number of Hispanics grew in Los Angeles County, the supervisorial lines drawn fragmented the geographically concentrated core community of Hispanics. Despite the obvious geographic concentration, boundary lines did not attempt to maintain that Hispanic core community within a single supervisorial district.

a. In 1950, Los Angeles County had a total population of 4,151,687. Hispanics (measured as persons with Spanish surnames) comprised 287,614 persons or about 6.9% of the County's population. As indicated in Map 1, the vast majority of the population resided in a concentrated geographic area east of the civic center. Map 1 highlights the census tracts that were 50% or more Hispanic and that define the core of the Hispanic community or "barrio" at that time. The supervisorial boundary lines drawn after the 1950 census in 1953 are indicated in Map 2. This map shows that the third District was inclusive of the East L.A. barrio. This district included the civic center and its southern boundary included the cities of Vernon, Maywood, Bell, Cudahy and Commerce. The boundary lines then went in a northwesterly direction to include Bell Gardens and Montebello. The east-

ern boundary continues to include Montebello and then moves below the city of Alhambra and proceeds north to include Highland Park and Eagle Rock. The northern boundary then proceeds northwesterly to the northeast San Fernando Valley to include Arleta until it arrives at Interstate 405 (the San Diego Freeway) where the western boundary line moves south along the interstate freeway until it reaches Wilshire Boulevard. There, the boundary line proceeds eastward along Wilshire part of the way and south of Wilshire until it arrives at the downtown area.

The Third supervisorial District as drawn in 1953 was inclusive of the core Hispanic community as well as including outlying areas in which Hispanics would expand over time. The 1953 district lines were amended slightly in 1957 and again in

Los Angeles Times Tues. Sept. 16, 1958

ROYBAL GIVEN FORD'S BACKING

City Councilman Edward R. Roybal, candidate for Supervisor from the 3rd District, yesterday received endorsement from Supervisor John Anson Ford, retiring from the office at the end of his present term.

"As the campaign for a Supervisor to take my place grows tense," Ford said, "I want to tell why I am so strongly in favor of Edward Roybal. The bigness of our county government (a budget of \$470,000,000) offers unparalleled chances for unselfish service—or for selfishness and corruption.

"Integrity, courage and understanding are the great essentials. Roybal has these qualities. As Councilman for eight years he has resisted sordidness and evil compromises. His emphasis on efficiency and economy in public offices reflects his UCLA training in business administration."

Roybal races his fellow Councilman, Ernest E. Debs in the Nov. 4 final election.

p. 00026

DEBS CONSIDERED BEST SUPERVISOR CANDIDATE

Two L.A. City Councilmen in Contest for Important County Administrative Post

From the standpoint of local importance and public the office of County Supervisor is one of the most important posts to be filled in Tuesday's balloting.

Two Los Angeles City Councilmen, Ernest E. Debs and Edward Roybal are the contenders.

The pair offer a combination of contrasts. Each is a Democrat. Debs leaning more to the conservative and Roybal farther to the left in political action.

Debs Admired

The record of the antagonists have led many of the county's representative leaders in business, civic, cultural and political activities to conclude that Debs would make a far abler county administrator than would his adversary.

Councilman Debs is a former member of the State Assembly and during his career in the Los Angeles City Council has won wide recognition for his fair and able consideration of public business.

The Times believes he would bring to the Supervisorial office a balanced and seasoned point of view that would represent a tremendous asset to a body charged with the transaction of so many vital aspects of public business.

Debs is neither timid nor a controversialist; he is a capable, intelligent and energetic public servant. The Times recommends his election to all who desire a county government run on an orderly, efficient, honest basis.

p.00043

Los Angeles Times March 25, 1959, pt. II, p.1

DEBS AND CHACE AGREE TO REARRANGE DISTRICT

Under an agreement reached yesterday Supervisors Ernest E. Debs and Burton W. Chase, a sizeable slice of Chase's 4th Supervisorial District was assigned to Debs' 3rd District.

The arrangement transfers in effect, nearly 59,000 voters from the 4th to the 3rd and brings about a better balance between the two county, governmental divisions.

Chace's district at present has 479,000 registered voters while that of Debs contains only 353,000 it was pointed out.

The change gives Debs virtually all of Beverly Hills and portions of West Los Angeles. Registered voters will be officially notified of the realignment prior to future elections.

The redistricting will become a legal reality after drawing up of a special ordinance by County Counsel Harold W. Kennedy.

p. 00057

Los Angeles Daily Journal March 25, 1959 p.1

SUPERVISOR DISTRICT BOUNDARIES SHIFTED

Residents of Beverly Hills, West Los Angeles, West Hollywood and Westwood will be represented by Supervisor Ernest E. Debs instead of Supervisor Burton W. Chace under a change in District Boundaries approved yesterday.

The action transferred about 100,000 registered voters from Chace's Fourth District to Deb's Third District effective June 1.

Debs said the transfer was needed because of the variance in voters which now stands at 351,133 in the Third District and 497,579 in the Fourth.

p. 00058

Election Result County Races
1958-1988 (Election Records)

Case No. CV 88-5143 Kn (Ex)

Garza, et al.

vs. County of LA, *et al.*

Plaintiff's Exhibit 2363

Date _____ IDEN.

Date _____ EVID

BY _____

Deputy Clerk

COUNTY

SUPERVISOR—THIRD DISTRICT

ERNEST E. DEBS	144,897
EDWARD R. ROYBAL	132,346
Scattering	151

ANTELOPE VALLEY HOSPITAL DISTRICT

For a Member of the Board of Directors

MARTIN A. BYRNES, JR.	4,623
DONALD C. KAHL	4,806
H.E. KICENSKI	4,002
BEATRICE T. KINNEY	4,002
ROBERT B. McNUTT	7,219
JOSEPH G. OLIVER	4,651
Scattering	1

SOUTH BAY HOSPITAL DISTRICT

For a Member of the Board of Directors

AUTEN F. BUSH	16,896
CHARLES V. JONES, JR.	4,992
CLYDE MARSH	16,327
MORRIS ROCKENMACHER	8,083
FRANK VISCA	4,515
Scattering	1

BELLFLOWER PARK, RECREATION AND
PARKWAY DISTRICT NO 11

For a Member of the Board of Directors

JAMES D. BROWN	13,272
DEWAIN R. BUTLER	19,739
MIGNON L. CAUGHRAN	19,527
FANNIE E. WEISS	15,449
Scattering	5

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

YOLANDA GARZA, *et al*,
Plaintiffs

vs.

**COUNTY OF LOS ANGELES,
LOS ANGELES BOARD OF
SUPERVISORS, *et al*,**
Defendants

VOLUME VII

**Nos. CV 88-5143-Kn and
CV 88-5435-Kn**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

**Los Angeles, California
Thursday, January 11, 1990**

LUCILLE M. LITSHEIM
Official Court Reporter
442-D United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 617-2677

I asked myself why each side of this bargain, Chace and Debs, wanted to do it? And why they wanted to do it then, before the 1960 census when there was no population equality requirement. Why did they want to do it then?

Debs had just run a very tight race against Mr. Roybal, who had appealed virtually, if not primarily, to Hispanics who lived in the Third Supervisorial District. The district was moved west. It was moved into areas of very low Hispanic concentrations, Beverly Hills, et cetera, known certainly to everybody to be low in Hispanic concentration.

That seemed to me to be a plausible reason: to make the district more easily winnable for Debs against either Roybal or a candidate who might appeal to the same sort of people as Roybal appealed to.

With regard to Chace, the information was that, in an insider newsletter, was that he feared that in the 1960 campaign Los Angeles City Councilperson named Rosalind Wyman, might run against him. He was up for reelection in 1960. And that indicated to me why he wanted to do it then, or at least a possible explanation of why he wanted to do it.

In any case, the swap occurred and the Third District became more heavily Anglo.

Q. Where did Rosalyn Wyman live?

A. She lived in Beverly Hills.

Q. She lived in the area, moved from the Fourth District to

Three.

THE COURT: Wait. Wait. She lived in Beverly Hills, didn't she?

THE WITNESS: I believe that's correct.

THE COURT: Wasn't she on the Los Angeles Council, city council?

THE WITNESS: That's correct.

THE COURT: But she lived in Beverly Hills? Well—

THE WITNESS: Maybe she lived in Belaire, maybe she lived in one of those areas around there. In any case, she lived in an area that was moved from the Fourth to the Third District.

Q. BY MR. STEVE ROSENBAUM: Were Mr. Debs and Mr. Chace political allies in other areas?

A. Mr. Chace was a Republican and Mr. Debs was a Democrat. I take it that they were at least to that extent political—they may have been political allies in some respect, but at least to that extent they were not political allies.

Q. This may be obvious to the court. If it is, I apologize but can you identify for the record who Mr. Roybal is and what—

THE COURT: I know.

MR. STEVE ROSENBAUM: Okay.

THE COURT: I know Congressman Roybal.

MR. STEVE ROSENBAUM: Okay.

THE COURT: I know who he is and I've talked to him in

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

YOLANDA GARZA, *et al*,
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vs.

**COUNTY OF LOS ANGELES,
LOS ANGELES BOARD OF
SUPERVISORS, *et al*,**
Defendants

Volume 8

**Nos. CV 88-5143-Kn
and
CV-88-5435-Kn**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

January 12, 1990

ROBERT L. CIPOLLONI
Official Court Reporter
417 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 680-1515

Q. So what you are saying is you just don't know whether the definition you are using is consonant with *Mobile versus Bolden*?

A. There have been certain interpretations of *Mobile versus Bolden* in scholarly literature which clashed with other interpretations of the *Mobile versus Bolden*, and they seem to me to be inconsistent with the way that this Supreme Court has decided certain other cases subsequent to *Mobile versus Bolden*. So I am not sure that I understand what concept of intent Mr.—Justice Stewart (ph) had in mind.

Q. Well, you described *Mobile verse Bolden* in your work as “Both the seal of approval on an unjust status quo and announcement that a credulous court is ready to defer to any state and local authorities who can offer plausible reasons besides race for their actions”; isn't that true?

A. Yes, it is. But I know there are people who disagree with me on that interpretation, and I was just trying to be cautious in the abstract and to say that they're disagreements as to what Justice Stewart's opinion means.

Q. You think that the statement that *Mobile versus Bolden* was “A seal of approval on an unjust status quo” was one of your more cautious statements?

A. No, it was not one of my more cautious statements.

Q. Let's turn to redistricting in 1959. I think you said

that this really wasn't a full reapportionment. If I've mischaracterized—let me ask you a different question.

How many—what happened there and how much of the county was moved around.

THE COURT: What happened there and how many who?

BY MR. BLACKMAN:

Q. How much of the county was moved around?

A. I believe what happened in 1959 was that three areas from the fourth supervisorial district, West Hollywood, West Los Angeles and an unincorporated part of the City of Los Angeles and Beverly Hills were moved from the fourth district to the third district. I think that is all that happened.

Q. There were—apparently there were no exchanges or movement of areas among other districts?

A. I believe that is correct.

Q. This was the redistricting when Mr. Chase, who was a republican, transferred to Beverly Hills, West L.A. and West Hollywood to Mr. Debs who was a democrat; is that right?

A. Yes.

Q. And you attribute to Mr. Chase the motive of moving Rosanne Wyman (ph) out of the district to avoid a potential opponent?

A. That is what the Insider Newsletter said.

Q. And Miss Wyman was a democrat?

A. Yes.

Q. And Mr. Chase was a republican?

A. That's correct.

Q. And the areas of West Hollywood and West Los Angeles had been fairly traditional democratic strongholds, had they not?

A. I have not seen election returns from that period of time. I would assume that they were.

Q. So it would be fair to infer that Mr. Chase was pleased to move out of his district liberal areas, and that Mr. Debs, someone more liberal than Mr. Chase, would be happy to have them?

A. Perhaps. I'm not absolutely sure that that is so. I guess. As I said I have not looked at election returns during that period of time.

Q. Have you done any assessment of the number of registered voters in either the first—strike that.

Have you done an assessment in the number of registered voters in either the fourth or the third district in 1959, both before and after this exchange of territory?

A. I don't think I've seen those figures. I certainly don't remember them.

Q. And would you look at exhibit 460.

A. Yes, I have it here.

Q. Was this the first occasion when you thought it would be useful to examine the political—let me strike that.

Had you ever considered looking at changes in registered voters and ethnicity of registered voters from 1959 to 1960 to see just what actual effect in terms of the potential outcomes this redistricting had?

A. I don't think I have. I do not think that there are any figures available, so far as I know, on the ethnicity of registered voters during this period. And so I didn't look at that. Perhaps there are. I don't know of any.

Q. Do you know what percentage of the third district was Hispanic in 1959?

A. No, I don't.

Q. Was what—

A. I do not have an overall—

MR. STEVEN ROSENBAUM: Objection.

MR. BLACKMAN: I'm sorry. If he wants to say more than he knows, I'll move to strike it.

MR. MARK ROSENBAUM: That's an incorrect statement.

THE COURT: The biggest problem is that we are talking over each other. So go ahead and ask the next question.

MR. MARK ROSENBAUM: I don't think the witness had an opportunity to finish his last answer.

THE COURT: Well, he didn't.

MR. BLACKMAN: Sir I asked you—

THE COURT: I didn't quite get it because of the two—the double—did you have something to finish?

THE WITNESS: Yes, if I may.

I don't believe that I know whether such figures aggregated on the supervisorial district exist. I don't think any do. At least as far as I know I have not seen any such figures.

BY MR. BLACKMAN:

Q. All right. Did you ask?

A. I can't recall whether I asked. I don't think I did.

Q. Are you aware of the special tabulations and statistical runs that have been done by the parties and the bureau of census during the course of this litigation?

A. No. I was pretty much ignorant of those sorts of things. There were other experts who were doing it.

Q. At the time in 1959 when this exchange of properties between the fourth and the third district occurred, did you find any article or newspaper report or letter which stated that Mr. Roy Ball (ph) intended to mount another campaign?

A. No.

Q. Did you find any evidence, article or the like, showing that some other member of the Hispanic community intended to raise a challenge to Mr. Debs?

A. No. It was three years before the election.

that are identified in exhibit 460, the areas that the district reexpanded into?

A. Yes, there were.

Q. And can you describe what those areas were?

A. Well, the one that comes to mind, because it was discussed in 1981 and several of the plans considered moving it from the first district into the third district, was Pico-Rivera. In general, I think the way to get an impression of these areas is to look at the red areas on the map, the areas of great Hispanic concentration which are to the east of the third district boundaries and those boundaries have not changed very much in the whole 30-year period.

Had you moved into the areas out the San Gabriel Valley and down here south, which include Pico-Rivera, you would have picked up a more Hispanic concentration than if you move into the areas of West Los Angeles, over into the San Fernando Valley and Eagle Rock. They could have done so. But they did not.

Q. I have no further questions.

THE COURT: Anything further?

RE CROSS-EXAMINATION

BY MR. BLACKMAN:

Q. Just a couple of questions.

With respect to Pico-Rivera, which you said remained

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

YOLANDA GARZA, et al.,
Plaintiffs,

vs.

**COUNTY OF LOS ANGELES,
LOS ANGELES BOARD OF
SUPERVISORS, et al,**
Defendants.

Volume 12

**Nos. CV 88-5143-Kn and
CV 88-5435-Kn**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

January 23, 1990

ROBERT L. CIPOLLONI and LUCILLE M. LITSHEIM

Official Court Reporters

United States Courthouse

312 North Spring Street

Los Angeles, California 90012

THE COURT: Sure.

I didn't quite understand your last answer. Maybe I just didn't connect up enough of it to get it through. You're talking about the district lines and we got on this intent matter here—

THE WITNESS: Yes, sir.

THE COURT: —but you talked about—you went even further and said that it had to do with—what?—the ability to raise money? Is that what you said? It wasn't exactly what you said.

THE WITNESS: Well, it's that—it's part of it. Perhaps, if Your Honor will allow me, what I said is the individuals are viable. As persons themselves, Mr. Munoz and Mr. Molina themselves are intelligent people. But the community at large in a district such as the one that they'd be running doesn't know them. They are individuals who are running in a large sea of unknown factors.

They're not running in Hispanic districts, therefore, they would have a hard time raising money from a non-Hispanic community, from the business sector. They have tremendous odds against them.

CROSS EXAMINATION

BY MR. FAJARDO:

Q. Congressman, turning your attention to the 1974

Congressional race you ran in. What communities did you do poorly in?

A. I did poorly in the communities like Alhambra and in Rosemead and Temple City. At the time I recall West Covina was part of the district in the '74 race.

Q. And in 1974 what was the racial composition of those communities?

A. Of those communities?

A. Yes.

Q. They were predominantly Anglo communities, yes.

THE COURT: In '74 Alhambra was predominantly Anglo.

THE WITNESS: I would say, yes, sir.

THE COURT: What is it now, do you know?

THE WITNESS: I still don't think it's predominantly—I think it is predominantly Anglo, yes, sir.

THE COURT: All right.

THE WITNESS: To a lesser degree but—

THE COURT: It seems that—that area seems to have a lot of people from Asian countries.

THE WITNESS: That's correct. A large Asian influence.

THE COURT: Monterey Park, I think even Alhambra.

THE WITNESS: That's correct.

Q. By Mr. Fajardo: Congressman—

THE COURT: My demographics are all derived from driving through the town.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

**YOLANDA GARZA, *et al*,
Plaintiffs**

vs.

**COUNTY OF LOS ANGELES,
LOS ANGELES BOARD OF
SUPERVISORS, *et al*,
Defendants**

Volume 10

**Nos. CV 88-5143-Kn and
CV 88-5435-Kn**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

January 18, 1990

ROBERT L. CIPOLLONI and LUCILLE M. LITSHEIM

Official Court Reporters

United States Courthouse

312 North Spring Street

Los Angeles, California 90012

THE COURT: Overruled. Overruled.

THE WITNESS: Well, people were bused into the—bused into the hearing, so somebody got them there.

Q. BY MR. FAJARDO: And were the persons who were bused in to the hearing, were those persons participating in the racial aspect of the demonstrations or the testimony?

A. To my knowledge they were.

Q. Now, I'd like to turn your attention back to the 1971 campaign against Mr. Brophy. First of all, what communities are included in the 49th Assembly District at the time that you ran for office in '71?

A. East Hollywood, Silver Lake, Echo Park, Lincoln Heights, El Sereno, parts of Highland Park, Eagle Rock and Alhambra.

Q. And what was the margin of your loss in that election?

A. 5,000 votes.

Q. And is there anything significant about that number?

A. Yes. The area where I lost by 5,000 votes was in Alhambra.

Q. And what is the racial composition of Alhambra?

A. At that time it was majority were Anglos.

Q. And during the 1971 campaign, were there any subtle or overt racial appeals made by your opponents?

A. In the—primarily in the runoff, there were some subtle and some overt mailings that went on.

Q. And could you describe these mailings?

A. One was a picture of me in the darkest, ugliest picture

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

YOLANDA GARZA, et al,
Plaintiffs

vs.

**COUNTY OF LOS
ANGELES, LOS ANGELES
BOARD OF SUPERVISORS,
et al**

Defendants

No. CV 88-5143-Kn and
CV 88-5435-Kn

REPORTER'S TRANSCRIPT OF PROCEEDINGS

**Los Angeles, California
Wednesday, January 3, 1990**

ROBERT L. CIPOLLONI

**Official Court Reporter
417 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 680-1515**

Supervisor Dana?

A. I did.

Q. Did anybody from Californios?

A. We—our intention was to meet with all of the supervisors and/or deputy because we distributed—we were all working people at the time and we were trying to do this as part of outside of our work. And, see, I believe that Californios as an organization met with all the supervisors. I was not part of all those meeting.

Q. You were not present at those?

A. Correct.

Q. Based on the actions that you described Californios taking, what criteria did Californios develop for drawing their plan?

A. First and foremost, we said we would follow the legal requirements of drawing districts which would be the plus or minus one percent population deviation, that we were to the get best way possible, not cross too many city lines, that we would observe communities of interests, that we would want to draw districts that are compacted and contiguous so that we wanted to observe all of the legal boundaries first and foremost.

Secondly, a major purpose which is why the reason we came into being was to maximize the political noise, the representation of Latino community, and to

ensure through an organized effort that the Latino community did not continue to be spread out among all of the supervisorial districts. We wanted to look, for example, at—the heart of the Latino community is considered the east L.A. area, but we also saw that there had been a significant growth in the San Gabriel population, and the predictions were that the San Gabriel population would continue to grow so we saw that that—the two-way focus—areas of focus in terms of drawing lines for the Latino community.

Q. What resources did Californios use in drawing this plan?

A. Well, used the computers at the Rose Institute.

Q. Are you aware of how Californios obtained use of the computers at Rose Institute?

A. Yes.

Q. And how was that?

A. Through the organization that we established back in February, the conference was at Claremont, we visited the Rose Institute and my understanding was that through Richard Santillan, who was a professor of the Rose Institute, that in fact the Rose Institute had agreed to let Californios use computers in their off hours.

Q. By "off hours," could you defined that time period?

A. They said we could use the computers from midnight to

around the house and—

THE WITNESS: No. Correct. I did not find them.

MR. BLACKMAN: I see.

BY MR. BLACKMAN:

Q. Now, your role in the Californios process was not on what you refer to as the research committee?

A. I was the chair of the Californios research presentation.

Q. Can you tell me what the research committee was?

A. It was the group that was actually involved in going out to the Rose Institute and looking at the lines and looking at the numbers and the different ethnic breakdowns in the composition of the different cities in the county. I was de facto a member of the research committee, but I was not involved in every single action that they did. As a chair I over—I had responsibility for overseeing all the committees, but I was not the chair of the research committee, for example.

Q. Were you on the research committee?

A. I went out to the Rose Institute on a couple of occasions.

Q. Now, you testified that your optimum goal or plan was to create a district which had the maximum concentration of Hispanics?

A. Yes.

Q. And you elected not to pursue such a plan?

A. Correct.

Q. Now, do you recall a conversation with Mr. Hoffenblum when he said that the Hispanics' best interest would be served by placing the ethnic population in one supervisorial district?

A. Yes.

Q. In fact you took a very strong and adverse position when that was recommended, did you not?

A. Yes, I did.

Q. In fact you took a position that was tokenism?

A. Yeah.

Q. And you expressed a position that it was racist?

A. Yes.

Q. You took the position, however, after having concluded among yourself that nevertheless represented the best interest of the Hispanic community; isn't that right?

A. I don't know what you are asking.

THE COURT: I don't either.

BY MR. BLACKMAN:

Q. You decided early in the process that the optimum plan would be to maximize the number of Hispanics in a particular district?

A. Yes. And by that we represent a district that would

have 75 percent Latino population. That's what we meant by one district, 75 percent. Not 50 percent. 75.

Q. Well, didn't Mr. Hoffenblum early in the process recommend to you a district which would maximize the Hispanic concentration?

A. He drew a plan—he proposed a plan to the boundary committee that had a 50 percent Latino district.

Q. Did you not have a discussion earlier than that with him in which the subject of a more Hispanic district came up?

A. I don't recall.

Q. Do you recall a conversation with Mr. Smith in which it was suggested that the best interest of Hispanics would be to concentrate the Hispanics in one district?

A. Those were general comments that were made that I already said were made before.

Q. Do you recall an offer to draw a district that accomplished that process, accomplished the maximum percentage representation of Hispanics?

A. No, I don't recall that.

Q. At the boundary committee you made a presentation which included what we referred to as your position statement; is that right?

A. Yes.

Q. Do you recall whether you made that presentation

before the Hoffenblum plan was proposed?

A. I don't recall the sequence specifically, but somehow—I don't recall the sequence specifically. I'm sorry.

Q. Let me invite your attention, if I may, to exhibit 4108.

A. Okay.

Q. Do you have that in front of you?

A. Yes, I do.

Q. The second page of the document at the bottom recites that it was read by you to the committee on the 29th of July, 1981; is that correct?

A. Yes.

Q. Let me ask you a few questions. That's what the document says is my first question.

A. That's what's the document says.

Q. And the document is correct?

A. I hope so. We were a volunteer organization, Mr. Blackman, so this could have been a typo.

Q. To the best that you know this was right. If you caught the typo at the time, you would have corrected it?

A. We weren't that good at proofreading frankly.

Q. There are a couple of typos in it that hear you out. The statement says on the second page if I may, and I'm in the first paragraph, which is a continuation of the

material from the prior page, and in the middle it says:

"Members of this committee have openly stated that Hispanics' best interests are served by placing this ethnic population within one supervisorial district."

Do you see that?

A. Yes.

Q. And is that referring to the statements by Mr. Hoffenblum and Mr. Smith?

A. Yes.

Q. Are they referring to one district?

A. Yes.

Q. You go on and say, but let me point out that our interests are not served by merely a token representative on this board; instead, it is best served by creating districts in which the Hispanic population will have a choice and equally important political clout and influence over the elected official over the district. You said that at the time?

A. Yes.

Q. Correct?

A. Yes.

Q. And do you recall if on July 29, 1981 any plan had been circulated by Mr. Hoffenblum or Mr. Smith?

A. I don't recall. As I said, I don't recall the sequence of these events. The comments that have been

made by Mr. Hoffenblum and Mr. Smith were made from the very beginning from the very first boundary committee. So when I said members of the committee have openly stated, I stated it throughout the process. Throughout the eight meetings of the boundary committee.

Q. So the statements to which you were responding were made as early as the first meeting of the boundary committee?

A. Correct.

Q. And at the first meeting there was no proposed plan and there were no percentages for you to react?

A. No, no, not at all. There were statements made as to side comments from Mr. Smith.

Q. Did Mr. Hoffenblum or Mr. Smith ever make the statement that Mr. Antonovich or Mr. Dana did not want Hispanics in their district?

A. No, I don't recall that.

Q. Do you recall any meeting with Mr. Dana?

A. No, I don't.

Q. Do you recall any meeting with Mr. Edelman or his representation Mrs. Fitch in which there was a discussion on whether Mr. Edelman would be happy—about whether Mr. Edelman had any problem representing the number of Hispanics that he then had in his district?

A. We had conversations with Mr. Fitch. I'm not sure

they were official meetings in her office. I think there were hallway conversations.

Q. Do you recall Mrs. Fitch saying that Mr. Edelman was pleased and happy to represent the Hispanic community?

A. Yes.

Q. Now you—

A. I'm sorry. Let me add that the statements were made—made were that Supervisor Edelman in fact was happy to represent the Latino community. I think the issue is a question of how many, a percentage, because I remember a conversation with Miss Fitch in which she said he does not believe, however, that all of the Latino population should be in his district. It would not be to the benefit of the Latino community to have all of the Latinos in his district, in Supervisor Edelman's district.

Q. That was a position Californios agreed with; am I right?

A. Well, it is a kind of half there and half here, Mr. Blackman. I don't think that was our position.

Q. What was the public position you took?

A. Our public position was that we wanted to maximize the Latino population in two districts.

Q. So it was your public position not to maximize it in one district?

A. Not to concentrate only in one district.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

YOLANDA GARZA, et al,
Plaintiffs

vs.

**COUNTY OF LOS ANGELES,
LOS ANGELES BOARD OF
SUPERVISORS, et al**
Defendants

Volume VI

**Nos. CV 88-5143-Kn and
CV 88-5435-Kn**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, January 10, 1990

LUCILLE M. LITSHEIM

Official Court Reporters

442-D United States Courthouse

312 North Spring Street

Los Angeles, California 90012

(213) 617-2677

THE COURT: It was just a simple question. I was trying to clarify.

MR. BLACKMAN: It was indeed a simple question, it was also a very relevant question.

THE COURT: Well, maybe. What do I know?

Q. BY MR. BLACKMAN: Mr. Huerta, I show you a copy of exhibit 4108 which is already in evidence. I'd like you to look at the document and tell me if you recall seeing it.

A. I believe I probably did see this at the time it was prepared but I don't have any specific recollection of it.

Q. Do you recall on July 29, 1981, if the Boundary Committee had arrived at any recommended or proposed plan?

A. I don't recall whether they did or not on that particular date.

Q. Would you look at the second page of the document.

A. Yes. (Witness complies.)

Q. In the middle of what is the first paragraph, there's a sentence which begins:

"Members of this committee have openly stated that Hispanics best interests are served by placing this ethnic population within one supervisory district. Let me point out that our interests are not served by merely a token representative on this board. Instead it is best served by creating districts in which the

Hispanic population will have a choice, and equally important, political clout and influence over the elected official of the district."

Do you recall being present when that statement was read?

A. I don't have a recollection of being present but I probably was present.

Q. Do you recall whether there was an explanation at the time as to what this meant?

A. By Miss Quezada?

Q. Yes, by anyone.

A. No, I don't recall that.

Q. Do you know—

THE COURT: What number is that? I'll look at it.

MR. BLACKMAN: 4108.

THE WITNESS: Here it is, Your Honor.

THE COURT: This gets to be such a big deal.

THE WITNESS: Here, Your Honor.

THE COURT: Thank you. Go ahead, counsel.

Q. BY MR. BLACKMAN: Do you know whether the members of the committee understood this to mean that Californios did not want a 65 percent district?

A. I would hope they didn't take it to mean that but I don't know what they would have understood by that statement.

MR. BLACKMAN: Thank you.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

YOLANDA GARZA, et al,
Plaintiffs,

vs.

**COUNTY OF LOS ANGELES,
LOS ANGELES BOARD OF
SUPERVISORS, et al,**
Defendants

Volume II

**Nos. CV 88-5143-Kn and
CV-88-5435-Kn**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

January 4, 1990

ROBERT L. CIPOLLONI

Official Court Reporters

417 United States Courthouse

312 North Spring Street

Los Angeles, California 90012

(213) 680-1515

A. Yes.

Q. Do you recall when the presentation was made?

A. I recall that there were a number of presentations made. This sounds like one of them, yes.

Q. Do you recall a presentation in which the Californios took the position that they did not wish to have their population focused in one district?

A. Yes, because there was a memoranda which I wrote to Supervisor Edelman stating that.

Q. Do you recall whether there was a reaction on the boundary committee to that proposal, to the fact that the Californios did not seek to be focused in one district?

A. Well, as I said in the memoranda, there was some surprise at the time that the information was initiated.

Q. Is exhibit 4111 in that same binder?

A. Yes.

Q. Let's take a look at that exhibit.

A. Would you like me to read it?

Q. It appears to be typed testimony of Dr. Richard Santillan of the Los Angeles County Reapportionment Commission, July 22, 1981.

A. Yes.

Q. Do you recall Mr. Santillan making any presentation?

A. I recall the name Richard Santillan. It seems to be his testimony.

MR. MARK ROSENBAUM: Objection, your Honor. Well—I'll wait until the question is asked.

BY MR. BLACKMAN:

Q. Let me ask a straighter question. Turn to 1192.

A. Yes.

Q. At the bottom, would you read the last paragraph.

A. Out loud?

Q. Yes.

A. "Californios for Fair Representation has shown you the two districts which we strongly feel will maximize our political representation in the county. In order to achieve this, it is necessary to have one district which is at least 50 percent and one at 40 percent. Anything less would be unacceptable to the Chicano community in county."

Q. Were you aware about this time that the Californios had indicated that they would accept no compromise for their proposal?

A. Yes.

Q. Did you ever advocate reducing the Hispanic population in Mr. Edelman's district?

A. No.

Q. Did Mr. Edelman ever take such a position?

A. Absolutely not.

Q. Did you ever express opposition to increasing the

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

YOLANDA GARZA, *et al*,
Plaintiffs

vs.

**COUNTY OF LOS ANGELES,
LOS ANGELES BOARD OF
SUPERVISORS, *et al***
Defendants

VOLUME IV

**Nos. CV 88-5143-Kn and
CV 88-5435-Kn**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

**Los Angeles, California
Monday, January 8, 1990**

LUCILLE M. LITSHEIM

Official Court Reporter

442-D United States Courthouse

312 North Spring Street

Los Angeles, California 90012

(213) 617-2677

But go ahead and ask the question.

Q. BY MR. MARK ROSENBAUM: In 1981, Mr. Edelman, in your judgment there was not two votes or three votes or four votes for a plan that would have put 50 percent Hispanics in your district and 42 percent Hispanics in Mr. Schabarum's district; isn't that correct? Wasn't that the particular reality?

A. I think that's correct.

Q. And in fact, sir, you never went to Mr. Schabarum or Mr. Antonovich and Mr. Dana and said, "Look, we'll put 50 percent in any district, let's put a 42-percent district in one of your districts as the Californios people want."

A. I don't know if that took place in that context. The feeling and the information that I got based upon discussions with the various supervisors and others was that the Californios' plan as presented would not go anywhere.

Q. And you knew as well, Mr. Edelman, that no plan that put 40 percent, 42 percent Hispanics in Mr. Schabarum's district and 50 percent Hispanics in your district was going to go. Didn't you know that, sir?

A. I don't know precisely. I can't recall exactly that no plan would go. But the Californios plan did some configuration of the supervisorial districts that—it lost, I think, some communities of interest. Geographically it was composed of areas that I know was objected to by the other people, so would have to vote on it.

Q. It was your information, sir, that the other supervisor's problem with the Californios plan was what it did to the communities of interest. You think that was the problem and not the fact they were putting 42 percent in Mr. Schabarum's district?

A. That may be—

MR. BLACKMAN: That's argumentative and misstates the witness' testimony.

THE COURT: Overruled. Overruled.

You may answer.

THE WITNESS: It may have been that as well as the percentage put in Mr. Schabarum's district. I'm sure that there were many factors that went into the judgment that I have.

Q. BY MR. MARK ROSENBAUM: Well, Mr. Edelman, you were trying to be a friend to the Californios.

A. I was trying to be helpful to them, yes.

Q. Well, in terms of being helpful, sir, did you ever say to your staff, "Let's sit down with them and get a 50 percent plan in my district and a 42 percent plan in Schabarum's district that won't have these same geographical and community of interest problems"?

A. I don't recall.

Q. Wouldn't that have been what friendship required, sir?

MR. BLACKMAN: Objection; argumentative.

MR. MARK ROSENBAUM: I withdraw the question.

THE COURT: Overruled. Well, all right.

MR. ROSENBAUM: I withdraw the question.

THE COURT: I think that the word "friendship" is ambiguous.

Q. BY MR. MARK ROSENBAUM: Didn't you know, sir, that there was no way that the board in 1981 was going to put a 42-percent Hispanic district in a district of the board majority and a 50/50 percent district in your district at the same time?

A. It's possible. Possible.

Q. You knew that Mr. Schabarum and Mr. Antonovich and Mr. Dana weren't going to take more Hispanics in their district; isn't that right, sir?

A. That's possible. As well as the configuration was not something that they would accept. Whether it was some underlying reason, as you point out, possibly, or other reasons. I can't—I can't say for sure.

Q. It didn't occur to you, sir, that maybe what is behind this is partisan politics? Do you think it was just a question of aesthetics and community of interest?

A. I didn't say aesthetics. You said aesthetics.

THE COURT: Right, yeah.

Q. BY MR. MARK ROSENBAUM: Didn't you regard this, sir, as a matter of tough-in fighting?

A. Of course.

Q. And, sir, in fact, with respect to the Hoffenblum plan, you

thought your problem with that plan was that you thought it benefitted the Republican supervisors; isn't that right?

A. No. My problem was that it weakened, in my judgment, the opportunity to have influence in the outlying areas of what—by “influence,” Democrats, uh—

‘It lumped all the Democrats into my district and Kenny’s district. Therefore it would make it much more difficult in carrying out what I thought were very important goals to achieve for the county of getting three votes on matters of importance to this county in that the other supervisors also hear from people who may not share their viewpoint. And, therefore, it was for that reason, along with others, including the opposition of the Californios, that I opposed the Hoffenblum plan.

Q. You thought, sir, that if the Hispanics and the blacks were taken out of Schabarum, Dana and Antonovich’s districts, they were going to have a hard time on the board because there wouldn’t be any pressure on the three supervisors?

A. Basically that’s correct.

Q. Because those three supervisors didn’t care about those interests; isn’t that right?

A. I won’t say that. I think that is a judgment you’re making.

Q. Isn’t it—

A. It would—

THE COURT: Wait.

THE WITNESS: It would be, in my judgment—and I think this was Mr. Hahn's view, also—it was important that we continue to have influence on the board by having minorities not lumped into one or two districts but have the opportunity for their influence in the other districts.

Q. BY MR. MARK ROSENBAUM: Continue to have them spread out in those districts; right, sir? You're saying that?

THE COURT: Well, I don't know what that means.

Q. BY MR. MARK ROSENBAUM: I mean continue to have them disbursed in those other districts; isn't that right, sir?

MR. BLACKMAN: Same vagueness, Your Honor.

THE COURT: Well—

MR. MARK ROSENBAUM: The record should reflect that the witness was nodding his head yes before Mr. Blackman stood up.

MR. BLACKMAN: I'd be happy to agree or disagree if I saw that.

THE COURT: It's clear. It's just the form of the question is kind of—it's a when-did-you-last-stop-beating-your-wife question. It's a tough one. So I think what you're saying is what he is saying and what you said may be considered the same but I'm not sure.

Q. BY MR. MARK ROSENBAUM: Mr. Edelman, in terms of the way you looked at things in 1981, you thought that the Hoffenblum and Smith plans benefitted the long-term prospects of the

Republican supervisors; isn't that right, sir?

A. It weakened it. I put it differently. It weakened the opportunity for influence that I felt was important to be brought to bear on the three outlying supervi—supervisors. That is, and that to me was the important, uh—important goal: Not to weaken the influence of minorities on the other supervisors by lumping them into my district and into Mr. Hahn's district.

Q. Mr. Edelman, do you remember being deposed on September 1st of this year, last year. 1989?

A. Yes.

Q. Reading, sir, from page 237, lines—

“Question: In addition to that reason, did you think that by the Hoffenblum and the Smith plans the Republicans would be strengthening their long-term prospects in those districts?

“Answer: Yes.”

Were you testifying truthfully at the time, sir?

A. Yes. And that obviously was one concern. But also there was concern that, as I just expressed to you—

Q. Sure. And you thought, sir—

MR. BLACKMAN: I'm sorry, Your Honor. Could he tell me the page?

MR. MARK ROSENBAUM: 237.

THE COURT: 237, and I don't see that.

MR. MARK ROSENBAUM: Which day are you on?

MR. BLACKMAN: Okay. I see where you are reading from. It was in an earlier question. Okay.

Q. BY MR. MARK ROSENBAUM: You thought that these plans had a definite partisan effect; isn't that right, sir?

A. It had as one—it did have that effect as well as what I just described.

Q. And you were aware in 1981, were you not, sir, that the Hispanics in Los Angeles County were generally Democrats; isn't that right?

A. That's correct.

Q. And you were aware in 1981 that blacks in Los Angeles County were generally Democrats.

A. Correct.

Q. And that contributed to why you thought the Republicans long-term prospects were going to be strengthened by the movements of those racial and ethnic groups; isn't that right, sir?

A. Correct.

Q. Sure. And that's—

THE COURT: "Sure" is not a question.

MR. MARK ROSENBAUM: I'm sorry. Strike that, please.

Q. BY MR. MARK ROSENBAUM: Have you ever thought, sir, that by setting up a district with 50 percent Hispanic population that the Hoffenblum plan was—the phrase you used just a few

moments ago—lumping the county Hispanics in one district?

A. Yes.

Q. Now, it wasn't the 50 percent number that was the problem, was it, sir?

A. No.

Q. You thought—

A. Although—

Q. You were aware that was the same number that the Californios wanted—

MR. BLACKMAN: I'm sorry, Your Honor, I think he said "no" and "although" and then he got interrupted.

THE COURT: He said "no" then the next question started and then he said "although," so, who started it first, it was an interrupted question.

So, go ahead, next question.

Q. BY MR. MARK ROSENBAUM: For the Smith plan, sir, you thought that by setting up a district with 50 percent Hispanic population, that the plan was also lumping minorities, Spanish, into one district; isn't that right, sir?

A. It had that consequence.

Q. But again, sir, it wasn't the 50 percent number that was the problem; isn't that right?

A. (Pause.) It was—it was, I think, more of lumping the minorities into two districts, my district and Mr. Hahn's district.

Q. In fact—

A. And weakening any influence that they might have in the other districts—

Q. And—

A. —which—

Q. Sorry.

A. —which would jeopardize, I think the goals that Mr. Hahn and myself had for county government.

Q. And in each case, sir, those plans put the district, 50 percent district, in your district; isn't that right?

A. That's correct.

Q. And you never went to Mr. Schabarum and said, "How about a 50 percent district" in his district?

A. I don't think so.

Q. Or a 45 percent district in his district?

A. I don't believe I did.

Q. That was part of the political reality that you knew that that was hopeless; isn't that right?

A. Possibly, yes.

Q. During the redistricting process, sir, you knew that four votes were necessary—

Incidentally, sir, did you ever tell the Californios people specifically what you thought was wrong with the plan regarding community of interest or the other matters?

A. I don't recall if I did or not, no.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

YOLANDA GARZA, et al.,
Plaintiffs,

**UNITED STATES OF
AMERICA,**
Plaintiffs,

vs.

CV 88-5143-Kn (Ex)

**COUNTY OF LOS ANGELES,
CALIFORNIA, LOS ANGELES
BOARD OF SUPERVISORS, et
al.,**

CV 88-5435-Kn (Ex)

Defendants.

LAWRENCE K. IRVIN, et al.,
Plaintiffs-Intervenors

**REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA**

Tuesday, February 20, 1990

APPEARANCES:

(See following page.)

**LUCILLE M. LITSHEIM, CSR #2409
ROBERT L. CIPOLLONI, CSR #8626
U.S. Court Reporters
U.S. Courthouse
312 N. Spring Street
Los Angeles, California 90012**

candidates in only two of the six elections; is that correct?

A. Yes. That does indeed appear to be correct.

Q. And Hispanic candidate was the plurality preference of Hispanic voters in three of the six contests; is that correct?

A. Yes. That appears to be correct.

Q. Now, Dr. Grofman, you've testified in lots of Voting Rights Act cases; is that correct?

A. Yes.

Q. On the subject of racially polarized voting?

A. Yes.

Q. And isn't it common for you to generate regression estimates of black support for black candidate, to take an example of 80, 90, 100 percent?

A. Certainly. In partisan contests such as, for example, North Carolina, my estimates were indeed for that sort. Just as in partisan contests here, Dr. Lichtman's estimates are of that sort.

Q. And, in Watsonville, you determined that Hispanic support for Hispanic candidates over several elections was essentially unanimous; isn't that correct?

A. That is essentially correct, yes.

Q. And isn't it true, Dr. Grofman, that you've never been involved in any case where the point estimates of minority

support for the minority candidates are as low as they are in the six county elections?

A. That is essentially correct, as well.

Q. Isn't that the real reason Dr. Lichtman was brought in, to do these partisan elections?

MR. STEVEN ROSENBAUM: Objection.

MR. MCDERMOTT: If he knows.

THE WITNESS: I have no knowledge of that point. Dr. Lichtman was brought in, as I was, by the Department of Justice.

BY MR. MCDERMOTT:

Q. Now, if we take Delgado and the '86 assessor primary, he was—he did not receive a majority vote, but he was the plurality preference among Hispanic voters; is that correct?

A. Yes. That's correct.

Q. I assume—let me frame it—you're not assuming that a majority of Hispanics would have voted for Delgado in the run-off?

A. I'm making no assumptions one way or the other about the dynamics of an election that never took place, given the exiting [sic] countywide composition of the electorate.

Q. Now, is it—we talked about the first four pages which are ecological regression. The last four pages of exhibit 416 are the extreme case analysis of the same

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

**YOLANDA GARZA, *et al*,
*Plaintiffs***

vs.

**COUNTY OF LOS ANGELES,
LOS ANGELES BOARD OF
SUPERVISORS, *et al*,
*Defendants***

Volume 9

**Nos. CV 88-5143-Kn and
CV 88-5435-Kn**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

January 17, 1990

ROBERT L. CIPOLLONI and LUCILLE M. LITSHEIM

Official Court Reporters

417 United States Courthouse

312 North Spring Street

Los Angeles, California 90012

(213) 680-1515

MR. MC DERMOTT: She is certainly up on all the data that is used for that purpose.

THE COURT: I'm not talking about that. I'm talking about what "the redistricting purpose" means which maybe—she may be. I don't know.

BY MR. MC DERMOTT:

Q. If you were drawing lines within the county to divide the county into fifths and determine with fairly reliable accuracy the number of people within each fifth of the county, would you view the projections for 1989 and 1990 reliable enough for that purpose?

MR. MARK ROSENBAUM: Same objection, plus a vagueness objection.

THE COURT: Why is it vague?

MR. MARK ROSENBAUM: The use of the phrase—first of all, it incorporates redistricting purposes in the notion of the question.

THE COURT: He talked about dividing it into five equal parts.

MR. MARK ROSENBAUM: Then he used the phrase—I believe he said fairly accurate or—the word fairly I remember. I don't remember the noun—the adjective that that adverb modified, but—

MR. MC DERMOTT: Why don't we re-read the question.

THE COURT: I'm not going to worry about it.

Overruled. I think she can talk about whether she can divide first, the district accurate in terms of dividing the county up into five equal parts. That's really the basic testimony.

THE WITNESS: Well, I almost want to answer it in a different way. For instance, see one—

THE COURT: How outrageous.

THE WITNESS: One difference between my work which is an estimate and the census is that the census can tell you how reliable it is. They can say you've got 100,000 people plus or minus one percent. I can't say that. I don't—there is no way for me to put confidence limits on my data, and I think and I hope that all the users of the data appreciate that, that it is an estimate. I can't stress that enough. It is an estimate. I try to be as careful and we try to be as clever as we can, but it is still an estimate, and I don't have confidence limits on it.

BY MR. MC DERMOTT:

Q. My question related to the 1989 and '90, not the estimates.

MR. MARK ROSEBAUM: I move to strike the other part as nonresponsive.

THE COURT: Well, let's just keep going. Let's hear what she has to say.

THE WITNESS: And the projections that would even apply to more because projections, one assumes that as time—you know, the further you go out into the future and there's a lot of—I think evidence that the further you go out into the future, the less reliable projections become because conditions change. That's just the nature of this work, but again it is hard to discuss reliability when you don't—it is not a sample. It is—it is an estimate.

THE COURT: I just want to throw this in to get a picture of what you are saying. The question was asked about '85 over '80, and you said, pretty clearly, you'd rely on '85, your PEPS.

THE WITNESS: Yes.

THE COURT: Now, he's asking you about '87 and '89.

MR. MC DERMOTT: '89 and '90.

THE COURT: Excuse me. '89 and '90. How does that go with that?

THE WITNESS: Well, those are two different questions. He's saying how reliable is the data and the implication for something as precise as redistricting, and all I'm telling you is that we've got an estimate here, and—see, I've been saying with a fair amount of confidence that the '85 data is going to give you a better picture of L.A. County than the 1980 census would because

we know the county has changed so much. I mean, all you have to do is go to Monterey Park to see the changes that have occurred in the ethnic composition of the county and, in fact, the whole state. But even more so in L.A. County.

THE COURT: You mean you now have to read the signs?

THE WITNESS: Right. But, you know, again because of the magnitude of the changes that have occurred since 1980, I feel like the '85 PEPS does depict the county better than the '80 census does. But how reliable it is, that is unanswerable. And how reliable the '87 is, again is unanswerable and even more so in '87 because I know I have these problems, and that's the honest-to-God truth.

You know, you just can't—nobody. DOF doesn't put confidence intervals on their estimates. I think we're all cognizant of that.

Q. I was going to ask this later on, but this just seems like a better time.

You were asked a question about whether DOF estimates had been validated against the decennial census. Have the PEPS estimates been validated against the decennial census or any decennial census?

A. No.

Q. Do you really know how reliable the PEPS estimates or projections are until you have that opportunity to validate

it against the decennial census?

A. That's true. Even then that—having validated it against the decennial census doesn't allow DOF to put confidence limits on their data and it won't us either. It will simply tell us what kind of error we might expect but, you know, we could have had a very good year or a very bad year with that estimate. So you are getting into an area that—you know, I used commonly used techniques and we do the work, you know, as well as we can. But when you talk about reliability I always think about confidence intervals and those I don't have.

Q. Okay. Let me turn for a minute to the Pasadena/Long Beach problem.

Did you state earlier that the missing data fully affects the '87 estimates and it doesn't affect the '85 estimates?

A. Correct.

Q. Now, you also made a statement, I think, about having 10 percent of the records, but you weren't sure whether that was a product of when the problem first arose or whether you were getting information from elsewhere in the county, and I'd like you to explain that a little bit more.

A. Well, as John and I understand it, and he's been doing most of the talking to the people, but he isn't completely

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**THE HONORABLE DAVID V. KENYON, JUDGE
PRESIDING**

YOLANDA GARZA, et al.,
Plaintiffs,
UNITED STATES OF AMERICA,
Plaintiffs,

vs.

**COUNTY OF LOS ANGELES,
CALIFORNIA, LOS ANGELES
BOARD OF SUPERVISORS, et al.,**
Defendants.

CV-88-5143 Kn (Ex)

CV-88-5435 Kn (Ex)

LAWRENCE K. IRVIN, et al.,
Plaintiffs-Intervenors

**REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
Thursday, February 22, 1990**

APPEARANCES:
(See following page.)

**LUCILLE M. LITSHEIM, CSR #2409
ROBERT CIPOLLONI, CSR #8626
U.S. Court Reporters
U.S. Courthouse
312 N. Spring Street
Los Angeles, California 90012**

rate of 42.1 percent, so it is not a large change.

Q. Now, in the sentence that immediately is below the table, you say that the citizenship rate for Hispanics has dropped by 10 percentage points during the decade. What was the number that you were referring to or—

A. In 1980, the citizenship rate for the 18-and-over population in L.A. County of Hispanics was 53.2 percent.

Q. Now, at this stage we're talking about the county as a whole, correct?

A. Correct.

Q. We're not talking about any subcounty areas?

A. Correct.

Q. Now, your next statement is that it's difficult to make calculations below the county level since the enormous numbers of migrants greatly swing the citizenship rate in any one area.

Let me stop at that point and ask you to explain what you meant by that.

A. Well, obviously if you look back at the number of migrants as documented by DOF, if you add domestic in-migrants to immigrants, 1.6 plus 800,000, you get about—I guess it is about 2.4 million new people in L.A. County for which we have very little data on their citizenship rate and it makes it very difficult.

As I started out with, it is—it is very difficult

county level even, but at the subcounty level, since we know that people don't distribute randomly, it is very difficult.

Q. Now, further on in that paragraph, you arrive at a figure of 37 percent as your estimate of the Hispanic citizenship rate in Dr. Estrada's Hispanic opportunity district number one.

Would you explain how you arrived at that figure.

A. Well, if the countywide rate is—and I'll go ahead and use 42.8 percent since it doesn't make a lot of difference.

The 42.8 percent compared to the 53.2, if I simply—well—that's not the one I want to compare.

The countywide rate was 53.2 percent and I noted in Dr. Estrada's analysis that the rates of his two districts were 45.7 and 47.5 percent citizenship rate for 18 and over Hispanics, indicating that in those districts there's a lower citizenship rate than in the county as a whole. So I simply assumed that the—that these—that those neighborhoods would remain in the same relative position relative to the county. And I simply ratio'd it.

I said well, if it was 47.5 percent in that district and 52.3 percent of the county, and I use that same ratio for the new county figure to the new district figure, I

come out with—in the case of the 47.5, I guess it was about 39 percent to keep those ratios the same.

Q. Just a minor clarification. At one point you said 53.2 and another point you said 52.3?

A. I mean 52.3.

Q. Just to be precise.

Now, in the next paragraph you made the point that you believed that it should be even less than 37 percent; is that correct?

A. I say that it is very possible because of the large—just the large amount of unknowns that we have. It is just—it is just—the unknown is as great as the known, and it makes it very hard to estimate.

Q. The 37 percent assumed that basically everything stayed the same, as I understand it?

A. Correct.

Q. And the rationale for why it might go below that is what?

A. Well, we know that people don't randomly distribute. For instance, in my own neighborhood, in the same school district and within a few miles of each other, we have one elementary school that is almost 40 percent Asian and another that is 10 percent Asian or 11 percent Asian, and it is just—it just illustrates that people don't randomly distribute. When they migrate, especially when

they migrate from far away, they tend to seek a community that they feel comfortable in or they have services that they value. So we know that there is not a random distribution of—particularly of immigrants; and therefore, one would expect that there is the high probability that you would have selective—you would have areas in which citizenship rate would change more than in other areas. It would drop faster say than in other areas.

Q. Is it possible in your view that the citizenship rate in Hispanic Opportunity District 1 could be as low as 33 percent?

A. It is possible.

Q. So far I assume you've made no adjustment to any figures or any adjustment—I'm sorry. Let me rephrase the question.

I assume that so far you have not been making any adjustments to the 1980 base for misreporting of citizenship under the Passel methodology?

A. Correct.

Q. If an adjustment were to be made, what effect would that have on the numbers?

A. It would reduce—it would reduce the citizenship rate.

Q. Now, let me ask you a couple of other questions.

Dr. Estrada indicated a concern in his testimony

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**THE HONORABLE DAVID V. KENYON, JUDGE
PRESIDING**

YOLANDA GARZA, et al.,
Plaintiffs,
UNITED STATES OF AMERICA,
Plaintiffs,

vs.

COUNTY OF LOS ANGELES,
CALIFORNIA,
LOS ANGELES BOARD
OF SUPERVISORS, et al.,
Defendants.

CV-88-5143 Kn (Ex)

CV-88-5435 Kn (Ex)

LAWRENCE K. IRVIN, et al.,
Plaintiffs-Intervenors

**REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA**

Thursday, March 1, 1990

APPEARANCES:

(See following page.)

LUCILLE M. LITSHEIM, CSR #2409
BEVERLY CASARES, CSR 8630
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Los Angeles, California 90012

Now, is that the figure that you used to apply to the Estrada districts, to the Groffman, to the most Hispanic district in the Estrada plan and the Groffman plans?

A. Well, with the correction that there was only one district in Estrada—

Q. I'm sorry.

A. —and initially only one district in Groffman and later there were plans. But, yes, that is the figure I applied to that most Hispanic district.

Q. So you're applying the countywide Passel corrected citizenship percentage to a subdistrict of the county with most Hispanic district that people are trying to draw?

A. That's correct.

Q. Do you view that as an understatement of the likely level of Hispanic—of the number of Hispanic voting age citizens between those districts?

A. I think that's probably an overstatement.

Q. And why is that?

A. Well, from other evidence we know that the Hispanic citizens are not distributed evenly across the county. Those Hispanics who have moved away from the center of the city to the San Fernando Valley. And as I showed in my research paper, particulars who moved out of the county, were more likely to be citizens.

Hence, those remaining in the concentrated core

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

were less likely to be citizens. So the average we're using of 25.6 would be a little higher for citizenship outside the core, a little lower inside the core. We don't know precisely how much above or how much below, but we can make a qualitative statement.

Q. You mentioned earlier that utilizing the countywide adjustment for specific census tracts would be subject to a degree of variation. Does it make you more comfortable, less comfortable, does it affect your judgment in any way that you're dealing with a case of a supervisorial district with large aggregates of tracts?

A. Well, I think there are a very large number of Hispanics in the supervisorial districts that have been drawn essentially in the one district that's been drawn by Dr. Estrada and Dr. Groffman. And so I feel fairly comfortable that certainly 25.6 is an upper bound to that. But how much below, I don't know.

Q. How many Hispanics of all Hispanics in Los Angeles County are located in Dr. Estrada's Hispanic opportunity district one?

A. Approximately half. Little less than half.

Q. Now, as part of your—

THE COURT: Say that again, how many Hispanics. Say that again. Less than half? I didn't quite get that.

MR. McDERMOTT: A little bit less than half of

all the Hispanics in the county of all ages are located within the Estrada district.

MR. MARK ROSENBAUM: That actually wasn't the witness' testimony, but—

THE COURT: Okay. Is that your testimony?

THE WITNESS: I thought that was.

MR. MARK ROSENBAUM: I may have misunderstood. I thought he said—

THE WITNESS: The question was, as I understood it, your Honor, how many of all Hispanics in Los Angeles County are in Dr. Estrada's district? And I said about half or a little less.

THE COURT: A little less than half.
BY MR. McDERMOTT:

Q. Let me direct your attention to page 19.

THE COURT: And this is Hispanic regardless of their status?

THE WITNESS: That's correct, in 1980.

THE COURT: Right, age, citizenship, none of that?

THE WITNESS: That's correct.

THE COURT: Hispanic.

BY MR. McDERMOTT:

Q. If I could direct your attention to page 19, the last sentence of the carryover paragraph, if that helps at all?

A. The last sentence of page 19.

Q. No, no, the last sentence of carryover paragraph in lines 6 through 8.

A. I'm sorry, you have lost me. Are we on page 18 or page 19?

Q. Page 19.

A. Page 19. For example, the MALDEF district has 46.1 percent of all Hispanic persons, citizens and non-citizens in the county. Yes, lines 6 through 8 of page 19. And that MALDEF was the terminology I used because at that time it hadn't been identified as district. It was later identified as Hispanic Opportunity District 1.

Q. As part of your decision to make the adjustment for misreporting, did you also examine the number of foreign-born within the most Hispanic district or within Dr. Estrada's district?

A. Yes, I did.

Q. And what did that examination consist of?

A. It showed me that there were, again, a very large proportion of the foreign born population in Dr. Estrada's Hispanic Opportunity District 1. And I refer to that in paragraph 9 on page 19.

Q. How does that affect your judgment about applying the Passel methodology?

THE COURT: About what?

MR. McDERMOTT: About applying the Passel methodology.

THE COURT: Okay.

THE WITNESS: An important part of the Passel methodology is concerned with the foreign-born population. In fact, his residual method has as a central part of it consideration of the foreign-born population.

If we have an area that has a very large proportion of the foreign-born population, and it's coincident with a large proportion of the Hispanic population, I feel comfortable that we're dealing with just that sort of area where there is likely to be a significant degree of misreporting of citizenship.

Q. What did you find about the proportionality of the presence of foreign born residents in the Estrada district?

A. Well, there are about, if I recall here, about 940,000 foreign-born. And the areas identified by the Department of Justice district, the initial one, and the MALDEF district, has a very large proportion of those foreign-born population. I think about 50 percent of the foreign-born people are in that area.

Q. How does that affect your opinion, as you stated earlier, that you believe you are underestimating the extent of misreporting within the Estrada district?

MR. MARK ROSENBAUM: Objection, leading.

THE COURT: Well, I think he already said that, didn't he?

MR. MARK ROSENBAUM: He said the conclusion, but—

MR. McDERMOTT: Which he stated earlier.

MR. MARK ROSENBAUM: The question as to the foreign-born part was the leading part of that question.

MR. McDERMOTT: I'll rephrase the question, because by adding a phrase, I think I can solve the problem.

Q. How, if at all, did your analysis of the presence of the foreign-born affect your earlier opinion that you believed you are understanding the degree of misreporting of citizenship within the Estrada district?

A. Well, I think I state it very clearly in that paragraph. It's an issue that foreign-born, the foreign-born population can be naturalized to become citizens, but they are not citizens by right.

A large proportion of the foreign-born population are not naturalized, and it gives me confidence that we are dealing with an area where there are large proportions of non-citizens.

Q. As part of your decision to apply the Passel methodology, did you also examine the legalization applications under the Amnesty Act?

A. Yes, I did.

Q. And what exactly did you do?

A. I requested the lists by citizenship code of the applications for legalization, and I received those, an initial set of those in the spring of last year. And I received an updated list of legalization applications in the summer from—I can't recall the gentleman's name at INS.

Those data showed about three-quarters of a million applications for legalization in Los Angeles County. Now, some of those are—there are two different programs and I perhaps don't need to go into that—but there were about three-quarters of a million applications for legalization in Los Angeles County. Many of those applications came from areas that had concentrated Hispanics. In fact, in one set of tracts there were more applications for legalization than there were people living in those tracts in 1980, suggesting that, of course, there was a significant number of non-citizens applying for legalized status.

Q. And how does that tie in to your decision to make the adjustment for the Passel methodology?

A. I think it's another piece of confirmation that we are on the right track when we make some adjustment for misrecording of citizenship, that in these areas people are likely to have made a mistake. But we are clearly identifying areas where there are non-citizens.

Q. Now, you indicated that you were utilizing the countywide Passel corrected citizenship rate for the Estrada district or most Hispanic districts in the Groffman plan; is that correct?

A. That's correct.

Q. And is there any data at the supervisorial district level that you know of that will allow us to make an adjustment at that level for Passel?

A. Not at the supervisorial level.

Q. If it had been, what would have the result have been?

A. I believe that the proportion of citizens in the most Hispanic district of the Groffman and Estrada plans would have been lower.

Q. Are you aware of any other validation of the Passel methodology, particularly as it relates to Los Angeles County?

A. I believe I was asked this question in one of my depositions and couldn't recall any. But since that time, I have come upon a paper that was done by David Heer, H-e-e-r, and Jeffrey Passel, where they in fact attempted a validation of the measure of undocumented aliens, and they have an unpublished paper—I have not had time to see whether it's actually been published—they have an unpublished paper which relies on a survey methodology to check the methodology developed by Warren and Passel.

Q. And how does that affect your conclusion here?

A. I don't have the paper in front of me. But if I recall it, generally they—while there were differences in the numbers they estimated from their survey methodology and from the application of the Warren and Passel methodology for Los Angeles County, they concluded that each validated the other and was, and they were good ways of confirming these measures of misreporting of citizenship.

Q. Now, was this survey methodology in any way based on residual for survey techniques?

A. No, they went out and did a survey just as we would describe it where they asked people about their citizenship.

Q. And that was in Los Angeles County?

A. That was in Los Angeles County.

Q. Now—

THE COURT: Let me explain. I've got some things, matters that have come up and I'm just wondering if we could stop a little earlier today, whenever. 12:30?

MR. McDERMOTT: I may be done by then.

THE COURT: You may be done?

MR. McDERMOTT: It is possible.

THE COURT: Well, I thought that this was going to be a lengthy—

MR. McDERMOTT: It will be, but more on cross than on direct.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**THE HONORABLE DAVID V. KENYON, JUDGE
PRESIDING**

YOLANDA GARZA, et al.,
Plaintiffs,
UNITED STATES OF AMERICA,
Plaintiffs,

vs.

**COUNTY OF LOS ANGELES,
CALIFORNIA, LOS ANGELES
BOARD OF SUPERVISORS, et al.,**
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CV88-5143-Kn (Ex)

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Volume 34

**REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
March 15, 1990**

ROBERT L. CIPOLLONI and BEVERLY A. CASARES

CSR License #8626 and CSR License #8630

Official Court Reporters

417 United States Courthouse

312 North Spring Street

Los Angeles, California 90012

(213) 680-1515

Los Angeles, California, Thursday, March 15, 1990, 8:10 a.m.

THE COURT: Good morning, everybody.

You are reminded you are still under oath, sir.

We will continue.

THE WITNESS: Yes, sir.

BY MR. McDERMOTT:

Q. Dr. Clark, I think that when we stopped yesterday, I was going to ask you how many of the five Grofman plans put two of the current supervisors in the same district.

A. I believe I responded that all of them did.

Q. And what happens to the Hispanic citizenship proportion in the most Hispanic district in each of those five plans if you don't put two supervisors in the same district?

A. It would decline.

Q. Do the five Grofman plans split cities?

A. They do.

Q. And how many of the plans split cities?

A. They all split cities because the plans are composed of whole tracts.

Q. And what would happen—would you explain your answer, your last answer there.

THE COURT: The whole tracts business.

MR. McDERMOTT: Yes.

THE WITNESS: Dr. Grofman, in constructing his plans, utilized whole census tracts and did not make adjustments for those tracts that are split among cities.

That means in some cases that you have to make considerably more adjustment than just splitting a single tract because that tract may be linked to another tract which wouldn't then be contiguous if you split the tracts.

Q. What happens to the Hispanic citizenship proportion in the most Hispanic district in each of his five plans if you don't split cities?

A. It would probably decrease.

Q. Do the five Grofman plans move many people from their current supervisorial districts?

A. Yes, they do.

Q. And what do you mean when you say they move people from their current supervisorial districts?

A. Well, all of the Grofman plans are substantial rearrangements of some of the districts, if not all of the districts, and in particular in creating the most Hispanic district it rearranges what is presently District 5 and District 3 to create a new District 3, and that requires that there will be about three-quarters of a million people shifted from one district to another because of that rearrangement.

Q. Is the same order of magnitude in terms of people being moved among supervisorial districts true with respect to the two Estrada districts?

A. Yes.

Q. What would happen to the Hispanic citizenship proportion in the most Hispanic district in the five Grofman plans or in the two Estrada districts if you moved fewer people, say half the number that those configurations move?

A. Well, by doing that, you'd be changing the boundaries, and as you change the boundaries, you would have a less—a lesser proportion of Hispanics and the proportion Hispanic in those most Hispanic districts would decrease.

Q. Now, Dr. Clark, do the—do any of the five Grofman plans divide the five districts in such a way that there is zero population equality?

A. No, they don't.

Q. I'm sorry. Zero population deviation among the districts?

A. No, they don't.

Q. And if you—is it possible to divide the five districts in such a way that in 1988 or 1990 there would be zero population deviation?

A. It would be possible to come close to it.

Q. And if you did that, what would happen to the Hispanic citizenship proportion in most Hispanic districts in the five Grofman plans?

A. Again, it would vary, of course, across the plans, but in the cases of the most Hispanic district, it would

probably decrease in all cases.

Q. And would the same thing be true of the two Estrada districts?

A. Yes.

Q. Dr. Clark, did you publish an article on Hispanic relocation and spacial assimilation?

A. I did.

Q. And could we turn please to exhibit 4150, your supplementary report of August 19th, 1989.

A. I don't have that before me.

Q. Is the article I just asked you about attached to this report?

A. Yes, it is.

Q. Where was that article published?

A. In the Journal of Social Science Quarterly.

Q. And is that a referee professional journal?

A. It is.

Q. And did that article focus on Los Angeles County in part?

A. Yes, it did.

Q. And what conclusions, if any, about Hispanic mobility did you reach as a result of your research for that article?

A. I think the primary conclusion related to the issue of whether or not Hispanic mobility was following a patent

similar to that of the mobility of other immigrant groups that had entered the United States in the early part of the 20th century. There was a debate in the literature about that issue and this article shows fairly conclusively that the movement of Hispanics to the suburban cities and the suburban parts of the county were more likely to be citizens and more likely to have been in the country sometime, hence they were following this assimilation process.

Q. Did you prepare a table for this case on the magnitude of Hispanic mobility in Los Angeles County?

A. Yes, I did.

Q. Could you turn to exhibit 4881, please. Bates stamp page number 7088.

A. Yes.

Q. And what does the exhibit—

MR. MARK ROSENBAUM: What's the bates number, please?

MR. McDERMOTT: 7088.

MR. MARK ROSENBAUM: Thank you.

BY MR. McDERMOTT:

Q. What does exhibit 4881 indicate, Dr. Clark?

A. This indicates that the mobility for the total population and Hispanic and black population derived from the American housing survey for Los Angeles County for

1985.

Q. Who publishes that survey?

A. The Bureau of the Census.

Q. And what conclusions do you reach from this exhibit?

A. The exhibit shows quite simply that the mobility rates for Hispanics is higher than that for the total population as a whole.

Q. Now, going back to your article on Hispanic relocation and spacial assimilation that's attached to exhibit 4150, what conclusions, if any, did you reach on the basis of your research for that article about the tendency of foreign-born Hispanics and recent immigrants to locate in the inner city?

A. I think one of the conclusions I came to was that we found that immigrants to Los Angeles County were moving into the inner city; that is, into the core of the county, while at the same time more immigrants who had been here over one or two or—we hypothesize three generations—had moved to the suburban cities and the suburban areas of Los Angeles County.

Q. What conclusions, if any, did you reach on the basis of your research for that article about the residential concentration of foreign-born Hispanics and recent immigrants?

A. Well, the implications, I think, from the research were

that you were getting a concentration of foreign-born Hispanics, recent immigrants, in the core areas, in the inner city, while the people who had been here longer were moving out to the suburbs. It was the classic process of suburbanization that occurs over time.

Q. And how did you measure that?

A. We looked at the data from the public use microsample, the PUMS data, to evaluate the mobility of the Spanish origin Hispanic population, looking at those who moved into the country recently, as well as the relocations between the inner city and the balance of the county.

Q. Did you compute residential dissimilarity indices?

A. We did.

Q. What conclusions, if any, did you reach from the research you did for your article about the socioeconomic status of the Hispanics moving out of the inner city into the suburbs?

A. I think we showed in some of the tables in the article that those Hispanics moving to the suburbs were more likely to speak English, were likely to be in higher occupation—higher status occupations, were, as I said earlier, more likely to be citizens, and were more likely to have higher incomes.

Q. What conclusions, if any, did you reach about the residential concentration or dispersion of those Hispanics?

A. We suggested that the dispersal for Hispanics moving to the suburbs was going to be greater and hence the indices lower—the dissimilarity indices would be lower than for those Hispanics concentrated in the core.

Q. Are you aware of any other research on this point?

A. Yes. There are other papers which have explored this issue, papers by Douglas Massey and Nancy Denton would be the ones who come¹ to mind readily. I'm also aware of Dr. Bruce Kane's writing on this issue for the Los Angeles Times.

Q. What implications does—do the conclusions that you've just outlined for us have for drawing a majority Hispanic district in terms of voting age citizens?

A. I think it suggests that the citizens in particular are dispersing throughout the county, and if you were, for example, to look at the mapping of turnout or of citizenship, you find that it is not concentrated within these districts simply drawn by Dr. Estrada and Dr. Grofman, that there are substantial numbers of citizens in the cities and unincorporated areas of the county well outside of the most Hispanic core area that's been drawn by Dr. Grofman and Dr. Estrada.

Q. By the way, in your research for that article, did you have data on citizenship?

A. Yes.

Q. And where did you get that data?

A. The Public Use Microsample, the PUMS data has self-reported citizenship on an individual basis for the five percent sample that make up the PUMS data for the County of Los Angeles.

Q. What were you using the self-reporting citizenship data for?

A. I was interested in the issue of whether or not there was a difference between citizenship rates in the inner city and in the suburbs, and I took the self-reported citizenship as a relative measure of the difference between the two regions.

Q. Did you consider at all adjusting the data for this recording?

A. That question was posed, but I believe the answer to it is the following: That the adjustment for citizenship is a countywide adjustment, and the analysis I was carrying out was for the inner city and the balance of the county, and that using that citizenship adjustment for both pieces would not have altered the relative proportion of citizenship in the inner city and in the county. But even more important the concern in the original work was on a regression analysis where we were interested only in the proportionality within the inner city. So I think there are a number of reasons why it wasn't an appropriate or

necessary methodology.

Q. Could you turn your attention to exhibit 4880.

A. Yes.

Q. Would you indicate what this exhibit is all about.

A. 4880 is a—an exhibit that lists 1988 registration data for the five Grofman plans and the two Estrada districts.

Q. Now, the registration data, is that for all groups or just Hispanics?

A. This is the registration data for the population as a whole.

Q. Now, let's take Grofman plan one as an example here. How many registered voters are there in the most Hispanic district, in Grofman plan one?

A. In 1988 in Grofman plan one, there were 422,724 registered voters in the most Hispanic district in Grofman plan one.

Q. That would be District 3?

A. That would be District 3.

Q. How many—do you know how many total registered voters there are in the county overall?

A. About 3.7 million.

Q. What percent of all registered voters in the county are in District 3?

Q. Oh, probably on the order of 15 percent. I would have

to calculate it to know exactly.

Q. What's the ratio between the number of registrants in District 3 and the number in District 5?

A. It is about two and a half to one, that is District 5 has about two and a half times the—or two and a quarter times the registered voters in District 3.

Q. Are these districts roughly equal in total population?

A. These are the districts that Dr. Grofman drew, and they vary in total population. I suppose we could call them roughly equal, but the variation changes across the five plans.

Q. Okay. What would account for the fact that there are so few registrants in District 3 relative to the other four districts?

A. Well, the reason is that within District 3, there are a very large number of noncitizens.

Q. And is the same thing true of the other four Grofman plans in terms of why the number of registrants is so low in District 3?

A. Well, it is true of Grofman plans two, three and four for District 3, but he renumbered the districts, and in Grofman plan 5 it is District 1. That's the equivalent of District 3 in the other plans. And in every case the only explanation is there are a very large number of noncitizens because, as we discussed, although the population is not

equal across the districts—the total population, they are roughly comparable.

Q. Is your conclusion different with respect to the two Estrada districts?

A. No, it isn't. Again, in the two Estrada districts there are a low number of registrants compared to the total number of registrants in the county.

Q. Is it possible to draw a redistricting plan in which districts are equal or—roughly equal in population but don't vary so much in terms of registered voters?

THE COURT: But don't what?

MR. McDERMOTT: But don't vary as much as these plans do in numbers of registered voters.

THE WITNESS: That would be possible.

BY MR. McDERMOTT:

Q. What would happen to the Hispanic citizenship proportion in a most Hispanic district in such plans if you were to do that?

A. Let me make sure I heard your question. What would happen to the proportion Hispanic?

Q. Correct.

A. It would decrease.

Q. Hispanic voting age citizenship proportion?

A. Hispanic voting age citizenship proportion would decrease.

Q. Would you turn your attention to page 14 of exhibit 4151A.

(Pause in proceedings.)

A. Yes.

Q. And could you describe what the table is there on page 14?

A. This is a table which summarizes several different sets of data related to the total population, the total citizenship population, the 18-and-over self-reported citizenship population, then the corrected 18-and-over citizenship population; that is, corrected for misreporting of citizenship, and then the '88 registered voters.

And this table analyzed those five categories for the present five supervisorial districts and for a variety of individual districts that had been proposed.

Q. Now, the MALDEF district, is that the same thing as Dr. Estrada's Hispanic Opportunity District number 1?

A. That's correct.

Q. And in that MALDEF district, as appears on the table on page 14 of exhibit 4151A, what happens as you move from total population to total citizenship to self-reported voting age citizenship to corrected voting age citizenship to registered voters in terms of the Hispanic proportions within that district?

A. It decreases substantially. It starts out at about a

little less than one-fifth, almost 19 percent of the total population. And ends up being just a little over 10 percent of the registered voters.

Q. In 1988?

A. In 1988.

Q. And returning for a moment to 4881—481 didn't. I'm sorry. What is the range of total variation in registration in total registration among the Grofman plans?

A. The range is from about minus 40 percent to plus 20 percent. So we're talking about a total deviation across the plans that varies from about 64 percent to 74 percent.

Q. And in the case of two Estrada districts?

A. In those two districts, again, recalling that I only had one district so I had to make assumptions about how the other four districts would be constructed, the ranges are in the proportions 55 percent to 62 percent total deviation.

Q. Okay. Did Dr. Grofman and Dr. Estrada—let me rephrase the question because I'm not sure Dr. Estrada did that. Did Dr. Grofman use total population as his apportionment base for determining population equality for his five plans?

A. That's correct.

THE COURT: Say that again. Does Dr. Grofman use what?

MR. McDERMOTT: Total population as his apportionment base for determining population equality for his five plans—for meeting one-man one-vote purpose.

THE COURT: Okay.

BY MR. McDERMOTT:

Q. Did you prepare a table showing what happens if you use citizenship or voting age citizenship as the apportionment base?

A. I did.

Q. And could you turn to exhibit 48—4879 and indicate what this table shows?

A. This table is an attempt to look at citizen and voting age citizen variation in 1990 for the Grofman plans utilizing, of course, the citizenship information we have for 1980 and applying it to 1990 data.

Q. The table is divided into essentially three parts on over two pages in which I look at total citizen variation, voting age citizen variation for the Grofman plans and for the two Estrada districts.

Q. And what happens if we use citizenship and voting age citizenship as our apportionment base?

A. If we use citizenship—total citizenship as the apportionment base, the variation across the five Grofman plans is between 20 and 32 percent. And in the Estrada districts, it's from just a little under 10 percent to

almost 20 percent.

If we turn to voting age citizens as distinct from total citizens, again recognizing that this is an estimate based on '80 data and used for the 1990 PEPS total population, the variation is from about 36 percent to 47 percent for voting age citizens across the Grofman plans, and for the Estrada districts it is from about 27 percent to 35 percent total variation.

Q. Are those variations higher in magnitude than the variations you get if you used total population as your apportionment base?

A. They are substantially higher, yes.

Q. And why is that, Dr. Clark?

A. That relates to the way in which the total citizens and the voting age citizens are distributed across the county. They're not distributed coincident with the total population.

Q. Does the distribution of total population—does the distribution of Hispanics, if we—within Los Angeles County, if we look at them in terms of total population, provide a good measure of the distribution of Hispanics if we look at them in terms of where they reside in terms of being voting age citizens?

A. No, it does not.

Q. And did you do a similar analysis as appears in 4879

for 1980 in your summary judgment declaration?

A. I believe so.

Q. And would that be reflected for the MALDEF district in paragraphs 22 and 23 on page 12 of exhibit 4151A?

A. If you could recall the page for me again.

Q. Page 12.

A. Yes.

MR. McDERMOTT: No further questions, your Honor.

CROSS EXAMINATION.

MRS. LOFTON: It doesn't look like the case is before the court, at all, from reading the papers. That's what I think.

THE COURT: Well, I don't know anything about it ma'am. What do you have in mind? We are right in the middle of a trial.

MRS. LOFTON: Well, I think we should be included in this trial. We are losing whole generations of people in the inner city because of lack of interest in the situation.

THE COURT: Is there a motion to join? I haven't seen it yet.

MRS. LOFTON: Yes, and March 26th is the date, but it looks like this trial isn't going to last that long. And we certainly put our papers in. We should have gotten some support even from the attorneys who are supposed to be

REGISTRATION VARIANCES**Garza Plan 1**

District 1	-46.1%
District 2	-10.1%
District 3	+16.1%
District 4	+16.4%
District 5	+23.7%
Total Variance	69.8%

**DISTRIBUTION OF SPANISH ORIGIN
REGISTERED VOTERS AND TOTAL POPULATION
IN 1982 GENERAL ELECTION PRECINCTS**

PERCENT SPANISH ORIGIN	SHARE OF COUNTY-WIDE SPANISH ORIGIN VOTERS		SHARE OF COUNTY-WIDE SPANISH ORIGIN POPULATION	
0-10%	106,162	26%	135,679	7%
10-20%	77,736	19%	227,633	11%
20-30%	48,952	12%	226,222	11%
30-40%	41,227	10%	195,617	9%
40-50%	31,323	8%	196,329	10%
50-60%	23,565	6%	205,576	10%
60-70%	22,017	5%	249,765	12%
70-80%	23,935	6%	223,480	11%
80-90%	17,496	4%	218,220	11%
90-100%	12,180	3%	187,581	9%
	404,592		2,066,103	

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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

YOLANDA GARZA, *et al.*,
Plaintiffs,

UNITED STATES OF
AMERICA,

Plaintiff,

vs.

COUNTY OF LOS ANGELES,
CALIFORNIA, LOS
ANGELES BOARD
OF SUPERVISORS, *et al.*,

Defendants.

LAWRENCE K. IRVIN, *et al.*,
Plaintiffs-Intervenors

No. CV 88-5143 Kn (Ex)

No. CV 88-5435 KN (Ex)

DECLARATION OF WIL-
LIAM A.V. CLARK IN
SUPPORT OF DEFEN-
DANTS' MOTION FOR
SUMMARY JUDGMENT
REGARDING THE
PLAINTIFFS' COMMON
SECTION 2 VOTING
RIGHTS ACT CLAIMS

DATE: October 23, 1989

TIME: 9:30 a.m.

DEPT: In The Courtroom
Of The Honorable
David V. Kenyon

Declaration of W.A.V. Clark

I, William A.V. Clark, declare as follows:

1. I have personal first-hand knowledge of the matters stated in this declaration and, if called to testify, could and would testify competently thereto.

I.

Summary of Qualifications and Testimony

2. I am a Professor of Geography and professional demographer. I am Chairman of the Department of Geography at UCLA where I have taught since 1970. I received a B.A. in Geography from the University of New Zealand in 1960, an M.A. from the University of New Zealand in 1961, and a Ph.D. in Geography from the University of Illinois in 1964. Attached as Exhibit A is a true and correct copy of my vitae.

3. I have testified (or been retained as an expert) in several cases involving demographic analysis. I conducted research and/or provided testimony in these cases on demographic and socio-economic issues, especially those relating to the location and structure of ethnic areas within cities. These cases involved the cities of Atlanta, Kansas City, Milwaukee, Norfolk, Oklahoma City, Topeka and Los Angeles.

proportion Hispanic would drop from 46.9 to 45.35 self-reported voting age citizens.

21. If the population of the MALDEF district were decreased further to reach a 50 percent self-reported Hispanic voting age citizenship majority, then the MALDEF district falls to 16.4 percent less than a one-fifth district. If the population difference between this and a one-fifth district was evenly divided amongst the other four districts, then the total deviation for a one-fifth district would be 20.5 percent.

22. If the County were divided into fifths on the basis of total citizenship, all ages, the MALDEF district would be 27.1% less than a one-fifth district and the total variance for an entire plan would be nearly 33.9%. If tracts were added to bring the MALDEF district to a full one-fifth in total self-reported citizenship, it would be 41% in Hispanic voting age citizenship.

23. If the County were divided into fifths on the basis of self-reported voting age citizenship, the MALDEF district would be nearly 39% less than a one-fifth district and the total variance for an entire plan nearly 48% (if the overpopulation of the other four districts were evenly divided among them). If tracts were added to bring the MALDEF district to a full one-fifth in total self-reported voting age citizenship, it would be about 37% in Hispanic voting age citizenship.

24. The variances reported above would be larger and the figures for Hispanic voting age citizenship lower if citizenship figures were corrected for misreporting and/or if city boundaries were respected and/or if the district were reconfigured so that all supervisors would continue to reside in their current districts.

VII.

Maximum Hispanic District

25. In contrast to the DOJ and MALDEF plans, I have developed a district which is contiguous, is close to one-fifth of the total County population, respects City boundaries, and contains the maximum potential proportion of Hispanic voting age citizens. The district is attached as Exhibit E. The specific details for this district are as follows:

Maximum District

Total Population	1467558
Hispanic	973851
% Hispanic	66.4
Voting Age Population	977139
Hispanic	595997
% Hispanic	61.0
Voting Age Citizens, Self-Reported	606143
Hispanic	271571
% Hispanic	44.8

The percentage of Hispanic voting age citizens in this district would be significantly less if figures were adjusted for misreporting. A district designed to maximize Hispanic voting age citizens under a plan dividing the County into fifths on the basis of voting age citizenship would be about 41%. A district designed to maximize Hispanic voting age citizenship under a plan dividing the County into fifths on the basis of voting age citizens would be about 37%.

VIII.

Summary of One Person One Vote Impacts

24. The table below, which is based on the most recent data from the Census Bureau, summarizes the variances from the one person one vote rule of the different plans and different measures:*

	% total pop	% total citizenship	% total 18 and over self-reg citizen	% total corrected 18 and over citizen	% total 1988 registered voters
Supervisor 1	20.49	21.10	19.85	19.52	19.43
Supervisor 2	20.10	19.54	18.90	19.05	17.94
Supervisor 3	19.95	17.48	17.90	17.62	16.63
Supervisor 4	19.35	20.62	21.51	21.75	21.96
Supervisor 5	20.10	21.26	21.84	22.07	24.04
Hoffenblum Plan	19.96	16.82	16.52	16.60	15.05
Californios Plan	19.36	15.63	15.44	15.11	13.60
MALDEF District	18.62	14.57	12.28	11.50	10.06
Justice District	17.69	14.35	12.09	11.26	10.20
Maximum District	19.63	15.65	13.42	12.63	11.20

*I have followed the official Census Bureau position that the undercount population of the 1980 Census cannot be estimated with accuracy:

"The Census Bureau has concluded that it was not feasible to adjust the counts from the 1980 Census on the basis of the available data in such a way as to ensure that the adjusted census counts would more accurately reflect the true distribution of the 1980 population than the official counts."

(1980 Census of Population and Housing. *The Coverage of the Population in the 1980 Census, Evaluation and Research Reports* PHC80-E4, by Robert E. Fay, Jeffrey S. Passel and J. Gregory Robinson, February, 1988, p. 7).

27. The MALDEF and Justice Department districts would have the effect of moving large numbers of the present populations in districts 1 and 3 to other districts. The new MALDEF district would move 751,662 into the new district, principally from district 1. At the same time adoption of the MALDEF plan would move 740,141 out of district 3 to new districts. Similarly for the Justice Department district, 697,770 would be moved into

the new Justice district principally from district 1, and 794,033 would be moved out of the present district 3 to new districts. The calculations are similar for the maximum district. In this case, 763,179 would be moved into the maximum district principally from district 1 and 728,624 would be moved out of present district 3 to a new district or districts.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of September, 1989, at Los Angeles, California.

William A.V. Clark

APPENDIX A

THE CENSUS BUREAU CORRECTION FOR MISREPORTING OF CITIZENSHIP

1. Because the census process contained no verification of self-reported citizenship and experts believed that the data were subject to significant misreporting of citizenship by immigrants who did not have legal status, the Bureau of the Census staff evaluated the accuracy with which citizens had been enumerated. The Census Bureau subsequently prepared and publicly released calculations of the number and proportion of voting age citizens in Los Angeles County in 1980 who were Hispanic. This information and the related calculations (which are approved methods of the Bureau of the Census) are set forth in a report by Jeffrey D. Passel, Ph.D., a copy of which is attached hereto.

2. Dr. Passel's calculations for Los Angeles County correct and revise the census data regarding the actual number and proportion of non-citizens among the County's 1980 adult Hispanic population. The new information represents the latest and most accurate information approved by the Bureau of the Census. For demographers, it is necessary to incorporate the revised informa-

tion into calculations of the proportion of Hispanics within the County who actually are citizens.

3. The Census Bureau's approved method of calculation shows that 25.6 percent of all Hispanics were voting age citizens in Los Angeles County in 1980. Of non-Hispanics, however, the percentage who were voting-age citizens was 70.9 percent.¹ The substantial difference between the percentage of Hispanics entitled to vote (25.6) and the percentage of non-Hispanics entitled to vote (70.9) is primarily explained by the presence of so many aliens among the County's adult Hispanic population² as well as from the larger percentage of minors among the Hispanic population. Only by considering age differences between Hispanics and other groups and excluding the alien segment of the population from other voting age Hispanics can we calculate the correct Hispanic proportion among voting age citizens.

4. The approved Census data indicates that while 659,375 adult Hispanics stated that they were citizens in 1980, only 529,017 of the County's voting age Hispanics were actually entitled to register and vote. Therefore, although Hispanics constituted 27.6% of the total population in the County, Hispanics accounted for only 12.1% of all voting age citizens. In detail, the Hispanic population, based on the most recent data, breaks down as follows:

¹This figure (70.9%) could be adjusted downward by not more than one tenth of one percent if national estimates for misreporting of citizenship by non-Hispanics of all ages were applied to Los Angeles County. Such an adjustment, however, would have negligible impact on the proportion of Hispanic citizens of voting age in any district analyzed for this litigation.

²Aliens were approximately 58 percent of Hispanic adults, as shown in the attached report from Jeffrey Passel of the Bureau of Census.

Los Angeles County, 1980

	<u>Population</u>	<u>Hispanics</u>	<u>Percent</u>
Total Population	7477503	2065503	27.6
Population 18+	5440815	1264970	23.2
Self-reported Citizens 18+	4515239	659375	14.6
Corrected Citizens 18+	4368131	529017	12.1

5. When the figures are corrected for misreporting of citizenship, the government's district falls from 49.4 percent Hispanic voting age citizens to 44.1 percent. The MALDEF district drops from 46.9 percent to 41.7%. My maximum district drops from 44.8 percent to 39.6%.

6. If tracts are added to bring the DOJ and MALDEF districts to a one-fifth district, the DOJ district drops to 40.76 percent corrected voting age citizens and the MALDEF district to 40.18 corrected voting age citizens.

7. If the County is divided into fifths based on corrected voting age citizens, the DOJ district would result in a total variance of 55% and the MALDEF district would result in a total variance of 53%.

8. In so adjusting the DOJ and MALDEF districts, I assume that non-citizens are at least as prevalent in these heavily Hispanic areas as they are County-wide. I use the Census Bureau's data for Los Angeles County as a basis for making the correction and determining the Hispanic proportion among voting age citizens. Because we are using aggregates of census tracts, we can feel confident in applying the 25.6 percent factor to each district. While any given tract may vary from the 25.6 percent factor, we are aggregating tracts that contain large numbers of Hispanics, which gives me confidence that the application of the 25.6% factor is a correct procedure. For example, the MALDEF district has 46.1% of all Hispanic persons (citizens and non-citizens) in the County.

9. Actually, I have overstated the numbers in favor of plaintiffs because I am applying a Countywide estimate of misreporting to the DOJ and MALDEF districts. In fact, the misreporting of citizenship will be much higher in those districts because there are more foreign born residents there. Every noncitizen is foreign born, but not all foreign born persons are noncitizens; some have been naturalized. Therefore, noncitizens constitute a subset of all foreign born persons. Within Los Angeles County, the areas where foreign born persons are concentrated are the areas where noncitizens reside. There are 2,065,503 Hispanics (persons of Spanish origin) in all of Los Angeles County, of whom 45.6 percent (940,897) are foreign born. The areas identified by the DOJ and MALDEF districts contain 1,020,294 Hispanics, of whom 52.65 percent (495,337) are foreign born. This higher percentage of foreign born in the DOJ and MALDEF districts shows that noncitizens are more concentrated in those tracts than in the county as a whole. Applying a Countywide ratio, therefore, overstates the proportion of Hispanic citizens in the heavily Hispanic areas.

10. Further evidence that I have overestimated Hispanic citizenship is derived from the applications for legalization in Los Angeles County. Analyses of the (I 687) legalization applications as of 7/19/89 indicate that there were approximately 616,618 applications for legalization of citizenship status in the recent (1988) amnesty program. Of these applications, 338,409 were from the area which contains the MALDEF and the Department of Justice tracts, and 278,209 were from the remainder of the county. Assuming that most of these legalization applications are from persons of Spanish origin (a reasonable assumption in areas which are heavily Hispanic), the proportion of applications from the MALDEF/Justice Department tracts is much greater than from the remainder of the county. Even though some of these applications are from persons who were not resident in the county in 1980 they confirm the correctness of the foreign born analysis.

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That is, there are many more applications (*i.e.*, noncitizens) within the DOJ and MALDEF census tracts than outside those tracts.

**United States District Court
EASTERN DISTRICT OF CALIFORNIA**

**RUDY BADILLO, CARMEN
FERNANDEZ,
JOE VILLAPANDO, BERRY MEANS,
and
EDWARD ALSTON
V.
CITY OF STOCKTON, CALIFORNIA**

**JUDGMENT IN A
CIVIL CASE**

**CASE NUMBER:
CIVS-87-1726-EJG**

- ☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Text Judgment is Hereby Entered According to the Court's Order Filed 1-9-90, Findings and Conclusions in Support of Judgment.

1-9-90
Date

J.R. GRINDSTAFF
Clerk

(By) Deputy Clerk S. Conley

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

RUDY BADILLO,
CARMEN FERNANDEZ,
JOE VILLAPANDO,
BERRY MEANS, and
EDWARD ALSTON,

Plaintiffs,

v.

CITY OF STOCKTON,
CALIFORNIA,

Defendant.

CIV. NO. S-87-1726 EJG

*Findings and Conclusions
in Support of Judgment*

This matter was tried to the court, sitting without a jury, from June 7, 1989 to June 15, 1989. At the close of plaintiffs' case-in-chief, the court granted defendant's motion for dismissal pursuant to Fed. R. Civ. P. 41(b) and articulated its reasons for doing so into the record. On June 28, 1989 the court entered judgment against the plaintiffs and in favor of defendant, indicating that a written order confirming the court's oral ruling would follow. Pursuant to Fed. R. Civ. P. 52(a) the court writes now to set forth its findings and conclusions and confirm its ruling.

Plaintiffs are a combined group of blacks and Hispanics residing in the City of Stockton, California. They filed this lawsuit to challenge the legality of a ballot measure, commonly known as Measure C, which was adopted by the voters of the City of Stockton in June and November of 1986. Plaintiffs allege that Measure C, if implemented, will violate the rights of Stockton's black and Hispanic citizens under: 1) § 2 of the Voting Rights Act (42 U.S.C. § 1973); and 2) the Fourteenth and Fifteenth Amend-

ments to the United States Constitution. Plaintiffs seek a declaration that Measure C is unlawful and an order requiring elections to be conducted on a district only basis.

Procedural Background

On February 19, 1988 the court granted plaintiffs' motion for a preliminary injunction, enjoining elections under Measure C. In addition, plaintiffs' motion for class certification was granted on March 25, 1988.¹ On September 23, 1988 the court granted plaintiffs' motion for partial summary judgment resolving certain factual issues in plaintiffs' favor. Based on the court's order the following facts were deemed undisputed:

1. The combined group of blacks and Hispanics is sufficiently large and geographically compact to form a majority in a single-member district.

2. No black or Hispanic has ever been elected mayor in Stockton. Since 1971 there have been two black candidates who, in the aggregate, have run for mayor five times, and one Hispanic who ran for mayor once in 1977. Only two Hispanics were ever elected under Stockton's former at-large electoral system. Both were elected in 1967. No black or Hispanic of Mexican-American origin was elected under Stockton's former at-large system.

3. Measure C employs voting procedures, i.e., an at-large general election for district representatives, an effective preclusion of single shot voting in the at-large general election, and a majority vote requirement, which enhance the opportunity for discrimination against blacks and Hispanics.²

¹The class was later decertified on March 28, 1989 after a conflict arose between plaintiffs' counsels.

²The court ruled in plaintiffs' favor on two additional issues as well in reliance on the Ninth Circuit's opinion in *Gomez v. City of Watsonville*, 852 F.2d 1156 (9th Cir. 1988). However, these issues were later deemed disputed when the Ninth Circuit deleted those portions of the *Gomez* opinion on which this court had relied. See *Gomez v. City of Watsonville*, 863 F.2d 1407 (9th Cir. 1988), *amending* 852 F.2d 1156 (9th Cir. 1988).

Thereafter, on May 26, 1989, plaintiffs filed a motion requesting the court to take judicial notice of the following factual issues withdrawn by the Ninth Circuit in the amended *Gomez* opinion:

1. There is a history of official discrimination against the plaintiff class affecting the right to vote, to register to vote, or to participate in the democratic process.

2. The population in Stockton consisting of blacks and Hispanics bears the effects of discrimination in such areas of housing, education, employment and health.

At the close of plaintiffs' case-in-chief the court denied the motion for the reasons stated in its oral analysis.

Standards for Rule 41(b) motion

Fed. R. Civ. P. 41(b) provides in pertinent part:

After the plaintiff, in an action tried by the court without a jury, has completed the presentation of evidence, the defendant . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

In making this determination, the trial judge is not required to consider the evidence in a light most favorable to the plaintiff. See *Wilson v. United States*, 645 F.2d 728, 730 (9th Cir. 1981). In a case tried to the court, "[t]he judge is the trier of fact and 'may weigh and consider the evidence and sustain defendant's motion though plaintiff's evidence establishes a prima facie case that would have precluded a directed verdict for defendant in a jury case.'" *Stone v. Millstein*, 804 F.2d 1434, 1437 (9th Cir. 1986), quoting 5 Moore's Federal Practice, paragraph 41.13[4] at 41-193 through 94 (2d ed. 1980).

Having weighed and considered the evidence, the court makes the following findings and conclusions.

I. Section 2 of the Voting Rights Act, 42 U.S.C. § 1973

Section 2 of the Voting Rights Act prevents a state or political subdivision from imposing any voting practice which results in an abridgment of the right to vote based on race. To prevail in a § 2 case challenging an at-large voting system, plaintiffs must satisfy three necessary preconditions.

First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. . . . Second, the minority group must be able to show that it is politically cohesive. . . . Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate.

Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986). Failure to prove any one of these preconditions is dispositive of a § 2 case. *Id.* See also, *Romero v. City of Pomona*, 665 F. Supp. 853, 863 (C.D. Cal. 1987), *aff'd* 883 F.2d 1418 (9th Cir. 1989).

A. Geographic Size and Compactness

The first of the three *Thornburg* preconditions requires plaintiffs to prove that the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* In this case the minority group consists of a combined group of blacks and Hispanics in the City of Stockton. On September 23, 1988 the court resolved the issue of the combined group's size and compactness in plaintiffs' favor when it granted plaintiffs' motion for partial summary judgment, finding that the *combined* group is sufficiently large and compact to form a majority in a single-member district.

However, plaintiffs have failed to present the court with any facts indicating that either blacks or Hispanics, when considered separately, are sufficiently numerous or concentrated to form a majority of the eligible voters in any district, either under

Stockton's former nine-district system or under the six-district system established by Measure C. Therefore, the court finds that the first *Thornburg* precondition is satisfied as to the *combined* group of blacks and Hispanics, but that plaintiffs have failed to prove that either blacks or Hispanics, when considered separately, are sufficiently numerous or concentrated to form a majority of the eligible voters in any district.

B. Political Cohesiveness

The second precondition requires political cohesion within the minority group. *Thornburg*, 478 U.S. at 50. "The inquiry is essentially whether the minority group has expressed clear political preferences that are distinct from those of the majority." *Gomez*, 863 F.2d at 1415.

In this case plaintiffs define the minority group as a combined group of blacks and Hispanics. Plaintiffs primarily sought to prove that blacks and Hispanics are politically cohesive through electoral analyses conducted by their expert, Dr. Race Davies. They also presented lay testimony, as well as the testimony and report of Dr. Gerald Hewitt. For the reasons that follow, this evidence fails to prove that blacks and Hispanics in Stockton are politically cohesive, either when combined or treated separately.

Since no elections have yet been conducted under Measure C, the court did not have the benefit of examining the results produced by elections thereunder. Therefore, Dr. Davies' conclusion concerning political cohesion was based on his election analyses of previous mayoral, city council, county supervisor and school board elections. His analysis included four citywide elections: 1) the 1977 mayoral race involving two black candidates, an Hispanic candidate, and one white candidate; 2) the 1981 mayoral race involving two black and two white candidates; 3) the 1985 mayoral race involving one black and three white candidates; and 4) the 1985 water district election involving one black and one white candidate.

Three of the four elections examined whether Hispanics will vote for a black candidate when opposed by a white candidate. However, as Dr. Davies conceded, none of the elections examine whether blacks will support an Hispanic candidate when opposed by a white candidate. The court finds this lack of information about black support for Hispanic candidates a major deficiency in plaintiffs' proof on the issue of political cohesion. The court also finds Dr. Davies analyses of non-citywide elections unpersuasive. Both black and Hispanic candidates ran, indicating that each group may have voted for candidates of its own race.

In addition, the court was not impressed with Dr. Davies' testimony, or his ultimate conclusion, which comprised the bulk of plaintiffs' case. His inherent bias as a consultant for plaintiffs' counsel was apparent throughout his testimony therefore making it impossible for the court to accept his testimony and report with the level of confidence necessary to find that the evidence preponderates in plaintiffs' favor on the issue of political cohesiveness.

Plaintiffs also offered the testimony of lay witnesses who testified that blacks and Hispanics work together to resolve common issues facing both groups as well as provide political support to each other. The court finds that blacks and Hispanics do face some common issues and that black and Hispanic organizations have worked together towards resolution of these issues. However, the evidence presented did not demonstrate the community of political interest necessary for a finding of political cohesion. In addition, the court has discounted the testimony of two of the lay witnesses, Mr. Summers and Mr. Oliver, finding it pervaded by personal bias.

Based on all the evidence the court finds that plaintiffs have failed to prove that blacks and Hispanics, when viewed as either a single minority group or when treated separately, are politically cohesive.

C. *White Bloc Voting*

The third of the three *Thornburg* preconditions requires plaintiffs to show that "the white majority votes sufficiently as a block to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. at 51. The court finds that neither Dr. Davies' testimony nor the raw data on which he relies provide the court with sufficient evidence to meet plaintiffs' burden of proof on this issue. Dr. Davies' credibility as well as his statistical analyses suffered from serious failings. Moreover, none of the evidence presented suggests that white block voting has the tendency to overshadow minority voting strength.

Since plaintiffs have failed to satisfy all three of the preconditions necessary to prevail in a Section 2 case, the court finds no need to proceed the additional step and analyze the seven Senate factors considered by Congress in its 1982 amendment to Section 2.

II. *Constitutional claims*

Plaintiffs also allege claims under the Fourteenth and Fifteenth amendments to the United States Constitution. To succeed on the constitutional claims plaintiffs must prove that Measure C was adopted for a discriminatory purpose and that it resulted in minority vote dilution. See *Rogers v. Lodge*, 458 U.S. 613, 617 (1982); *Romero v. City of Pomona*, 665 F. Supp. 853 (C.D. Cal. 1987), *affirmed*, 883 F.2d 1418 (9th Cir. 1989). Racial discrimination need not be the sole purpose behind the measure, and its discriminatory intent may be inferred from the totality of the facts. *Romero*, 665 F. Supp. at 868-69.

Plaintiffs' only direct evidence concerning the intent behind the development and adoption of Measure C was an editorial from the Stockton Record containing pictures of two controversial local politicians, one white and one black. The tenor of the editorial sought a change in Stockton's election system and was used as a campaign flier by proponents of Measure C. Plaintiffs called the

editorial a "hit piece" and contended that the inclusion of the picture of Ralph White, the black politician, demonstrated Measure C's discriminatory intent.

The court rejects plaintiffs' conclusion that the editorial's inclusion as part of a campaign flier on the eve of the election warrants categorizing it as a hit piece. Based on the evidence presented the court finds that the editorial presented a relatively well-balanced analysis of the desire for change in Stockton's election system. Moreover, the record is replete with testimony from plaintiffs' own witnesses to show that Mr. White's race was not the reason for his unpopularity.

Equally unpersuasive is plaintiffs' reliance on the results of Professor Hewitt's interviews of several Stockton residents concerning their perceptions of Measure C. Although Hewitt testified that all ten to fifteen persons interviewed believed the purpose of Measure C was to oust Ralph White from the city council, the interviewees did not constitute a random sample; rather, they were selected by Hewitt because of their political activism.

Other than the Stockton Record editorial, plaintiffs have failed to present evidence sufficient to prove a discriminatory intent behind Measure C. In addition, plaintiffs have failed to prove a discriminatory effect. Accordingly, the preponderance of the evidence presented establishes that Measure C does not violate the Fourteenth and Fifteenth amendments.

III. *Retrogression*

At trial plaintiffs raised an additional basis for relief contending that Measure C is retrogressive. This claim is rejected as a matter of law on the ground that the City of Stockton is not a jurisdiction covered under § 5 of the Voting Rights Act.

Conclusion

For the reasons stated in its oral analysis as well as those contained herein, defendant's motion for involuntary dismissal pursuant to Fed. R. Civ. P. 41(b) is granted.

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IT IS SO ORDERED.

DATED: January 9, 1990.

Edward J. Garcia, *Judge*
UNITED STATES DISTRICT COURT

Constitutional Provisions And Statutes Involved

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend XIV, § 1.

The Fifteenth Amendment to the United States Constitution provides, in pertinent part:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

U.S. Const. amend XV, § 1.

Section 2 of the Voting Rights Act provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973 (1965) as amended by Act of June 29, 1982, Pub.L. 97-205 § 3, 96 Stat. 134.

California Elections Code § 35000 provides:

Following each decennial federal census, and using population figures as validated by the Population Research Unit of the Department of Finance as a basis, the board shall adjust the boundaries of any or all of the supervisorial districts of the county so that the districts shall be as nearly equal in population as may be. In establishing the boundaries of the districts the board may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the districts.

Cal. Elec. Code § 35000 (West 1989).

California Elections Code § 35001 provides:

The boundaries of the supervisorial district shall be adjusted by the board before the first day of November of the year following the year in which each decennial federal census is taken. If the board fails to adjust the boundaries before the first day of November following the year in which the federal census is taken, a supervisorial redistricting commission shall do so before the 31st day of December of the same year. The adjustment of the district boundaries shall be immediately effective the same as if the act of the supervisorial redistricting commission were an ordinance of the board, subject, however, to the same provisions of referendum as apply to ordinances of the board.

Cal. Elec. Code § 35001 (West 1989).

California Government Code § 25005 provides:

A majority of the members of the board constitute a quorum for the transaction of business. No act of the board shall be valid or binding unless a majority of all the members concur therein.

Cal. Govt. Code § 25005 (West 1988).

Article II, section 7 of the Los Angeles County Charter provides:

Sec. 7. The Board of Supervisors may, by a two-thirds' vote of its members, change the boundaries of any supervisory district. No such boundaries shall ever be so changed as to affect the incumbency in office of any supervisor. Any change in the boundaries of any supervisory district must be made within one year after a general election.

L.A. County Charter, art. II, § 7.

